REGD. GOA - 5

Panaji, 18th February, 2000 (Magha 29, 1921)

SERIES II No. 47

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

order

No. 28/12/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 7th October, 1992.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/15/90

Shri Minguel Colaso —Workman/Party I

V/s

M/s Souza and Sons — Employer/Party II

Workman represented by Shri S. V. Cuncolienkar.

Employer represented by Adv. B. G. Kamat.

Panaji: Dated: 24-9-92

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its Order No. 28/12/90-LAB dated 10th April, 1990 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the Management of M/s Souza & Sons, Margao, in terminating the services of Shri Minguel Colaco, Baker, w. e. f. 1-9-1985 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of this reference a case at No. IT/15/90 was registered and notices were served both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Minguel Colaso (hereinafter called as the 'Workman') was employed by Party II-M/s. Souza and Sons, (hereinafter called as the 'Employer') in his Bakery and Confectionery Shop situated at Old Market, Margao, Goa The workman was serving with the employer since 1968. However, his services were orally terminated w. e. f. 1-9-85 without any reason and without paying his legal dues. Hence, the workman contends that his termination is illegal and unjustified. Being agrieved by the said order of termination the workman approached the Goa Trade & Commercial Workers' Union to raise a dispute before the employer and the said union by its letter dated 19-8-1987 requested the employer to reinstate the workman with full back wages & other incidental reliefs. However, no action was taken by the employer and hence the Union took up the matter before the Asst. Labour Commissioner, Margao. However, the workman states that he is unaware of the outcome of the said dispute. Hence, he raised another dispute on 17-9-89 which was admitted in conciliation. The Conciliation Officer sent a notice to the Employer on 9-11-89 and directed him to appear but the employer instead of attending the conciliation proceedings sent a letter dated 15-11-89 in which he denied all the allegations relating to the illegal termination and instead contended that the services were abandoned by the workman on his own. As there was no settlement, a failure report was submitted on 23-1-90 in response to which the Government was pleased to make the above referred reference. Hence, it has been prayed that the order of workman's termination be held as illegal and unjustified and that he should be granted reinstatement with other incidental reliefs.

3. Party II-M/s Souza & Sons by its Written Statement at Exb. 5 resisted the workman's claim contending entirely as follows:

It is denied that the workman was serving as Pastry man and instead he was working as bakery man cum delivery man in the employer's establishment. On or about 15th August, 1985 the workman gave 15 days notice of his intention to retire from service w. e. f. 1-9-85 since he wanted to start his own business. Hence, the employer recruited one more person by name Nevis to replace the present workman from 1-9-85 and directed the workman to introduce Mr. Nevis to the employer's customers atleast for 3 days from 1st to 3rd of September, 1985 The workman attended the said work only on 1st September 1985 and thereafter he did not turn up at all. Hence, it has been denied that the workman's services were terminated and the said termination is illegal and unjustified. It has been contended that Goa Trade & Commercial Workers' Union gave up the workman's cause when the said Union realised the nature of termination of services being one of voluntary retirement on the part of the workman. It has been further contended that when the workman left the services he had put in 17 years of service and he owed to the employer a sum of Rs. 4,500/- which was retained by him from daily sales of bakery products. Hence, it has been prayed that the workman is not entitled to any relief whatsoever.

4. The workman thereafter filed a rejoinder (Exb. 4) wherein he controverted the employer's contention raised in his Written Statement and reiterated his claim made in the Statement of Claim.

5. On these pleadings I framed the following issues at Exb:5.

1. Does Party No. I/Workman prove that he was illegally retrenched from services by Party No. II and that he did not voluntarily retire?

2. If yes, does he prove that the order of retrenchment is not legal and justified?

3. If yes, is he entitled to any relief?

4. What award or order?

Thus, my findings on the above issues are as follows for the reasons stated below:

1. In the negative

2. No

3. Party No. I is not entitled to any relief

4. As per final order below

REASONS

In order to substantiate his claims, the Workman has examined himself at Exb.7 and he has also led evidence of Shri B. B. Naik who is serving as Dy. Labour Commissioner at Margao. He has produced the Conciliation Proceedings. The Employer has examined himself at Exb. 12 and he has also led the evidence of two more witnesses namely (1) Shri Pedrin D'Costa (Exb.13) and (2) Shri K. D. Naik (Exb.6). Now, the only question that arises for determination in this reference is whether the workman was illegally retrenched from services by the Employer as alleged by him or whether he voluntarily resigned as contended by the Employer. Now, it is a common ground that the workman was serving with the Employer since 1968 and his services were discontinued from 1-9-1985. It is also a common ground that the Employer did not allege any misconduct on the part of the Workman and hence no inquiry was held nor provision of Sec 25F were complied with. Now, in as much as it is the workman's allegation that he was illegally retrenched, it has been urged by Shri Cuncolienkar that even if the workman had abandoned his services, still the order of retrenchment would be bad in law. To support his submission, in this behalf, he has placed reliance of two rulings of our High Court to which a reference will have to be made in brief. In the case of Raiz Ahmed and Munir Ismail Mohammed of Bombay and another reported in 1980 CLI-679, it has been observed that even if the story of voluntary abandonment of service by the workman put by the employer is accepted-still it was incumbent upon the employer to hold an enquiry-before treating the service as terminated on this ground. In the absence of such an enquiry by the employer the termination of service cannot be held legal and valid.

6. To the same effect, there are the observations in the case of Gaurishankar Vishwakarma v/s Eagle Spring Industries Pvt. Ltd. and Ors. (38 B'bay H. C.). Wherein it has been observed that it is now well settled that even a case of abandonment of service, the employer has to give notice to the workman calling upon him to resume duty and also to hold an inquiry before terminating his services on that ground. However, at the outset, it will have to be stated that the ratio in the above referred two rulings could have helped Shri Cuncolienkar if it were proved that the workman had abandoned his services. Now, the burden of proving illegal retrenchment is obviously upon the workman and hence I now proceed to consider the workman's own evidence at Exb. 7. His evidence discloses that he was serving as pastryman and his monthly salary was Rs. 450/-. He has stated that his services were verbally terminated w. e. f. 1-9-85 without any reason. He has further stated that he was not paid anything at the time of termination and hence he approached the union and the union took up the matter to the Employer by a letter at Exb. 8. In his cross examination, he has initially admitted that he was serving as Bakerman and also a delivery man. However, in the next breath, he has denied to have worked as delivery man. He has denied that by about 15-8-85, he intimated the employer that he would be starting his own business and would not come for duty from 1-9-85. However he has admitted that, at Sanvordem he used to work with some bakers, but he had denied the suggestion that he had started his own bakery at Sanvordem. However, he has admitted that he laid a foundation of bakery which is lying down. Finally, he has denied the suggestion that he closed the business as he had incurred losses. This is the only evidence that has been led by the workman in proof of his allegation.

7. Now, it has been rightly pointed out by Shri B. G. Kamat that the workman was really aggrieved, not by dis-continuance of his service, but by non payment of his legal dues. I find that there is substantial force in the argument of Shri Kamat. In his cross examination, the workman has given a candid admission by saying, "It is true I approached the union for claming gratuity. Since it was not paid, I approached Labour Commissioner." Now, whatever has been admitted by the workman is substantially borne out by the documentary evidence in the R & P of Conciliation Proceedings. there is the workman's letter marked at Annexure 'A'. It is dated 17-7-89 in which the workman has made the following complaint:

> "Also the Respondent has not paid the gratuity, notice pay and other compensation to the Applicant."

His prayers in the last column of this letter is thus:

> "So, now the applicant pray you to recover my amount from the respondent after calculating the same as per the Labour Act"

Thus, on reading the aforesaid letter addressed to the Assistant Labour Commissioner it is abundantly clear that the workman was really aggrieved by the non payment of his legal dues and hence he made a complaint to the Dy. Labour Commissioner and sought his intervention for making payment of his legal dues. In this letter, there is not even a slightest reference that he should be reinstated in service. Now, Exb. 8 is a letter sent by Goa Trade & Commercial

Worker's Union to the Employer. It is dated 19-8-87. Relying on this letter, it has been rightly pointed out by Shri B. G. Kamat that after the workman's services were dis-continued from 1-9-85, he kept silence for about 2 years i. e. till the above referred letter was sent on 19-8-87. If at all the workman's services were illegally terminated and if he were jobless, then certainly he could have raised a dispute much earlier than 19-8-87. This inaction on the part of the workman supports the employer's contention that, since the workman wanted to start his own business, he voluntarily resigned. Thus in the above referred circumstances read in conjunction with the evidence of the workman, it is obvious that the workman has failed to prove that he was illegally retrenched by the employer.

8. As against this evidence, the employer in his evidence at Exb. 12 has stated that in the middle of August 1985, the workman told him that he did not want to continue his services. He stated that from the next month, he would not be coming. This he told in the presence of the witness Shri Pedrin. Over and above, he said that the workman went to the other side of the road and informed him that he would not be coming and asked him i.e. "Employer" whether, he understood what he was saying. He has further stated that since the workman left the services, he had to engage another workman by name Shri Nevis. Finally, he has stated that he had requested the workman to introduce the new man to his customers for about 3 days. However, the workman did not respond to the employer's request. He has also stated that when the workman left, he was owing Rs. 4,500/- to him which were the sale proceeds which he had collected from his customers. However, the workman did not settle the account. In his cross examination, it has been brought on record that the workman did not give any resignation in writing but he orally told him. Since he had resigned, there was no question of calling him back by the employer.

9. Now, Whatever has been stated by the employer finds corroboration in the evidence of Shri Pedrin D'Costa (exb. 13) He has also stated that he was present when the workman came and told him the employer that he would be leaving his services from the first date of the next month. Accordingly, he did not resume after 1-9-85. He also stated that the workman went to the other side of the road and again repeated that he would not be coming from September. In his cross examination, he has denied the suggestion that he was not serving with party 2 since last 30 years. There is absolutely nothing to dis-believe this witness on a material point.

10. The last witness examined by the Employer is Shri K. D. Naik. In his evidence, he has stated that in the month of August 1985, this workman approached him and requested him to stand surety for the dues which he was owing to the Employer. He also stated that the workman told him that he was leaving the services by 1-9-85. Lastly, he has stated that when he asked the workman as to why he was leaving the services, he told him that he was starting his own bakery. In his cross examination he has denied the suggestion that he has concocted a false story. Thus, the evidence of this witness further leads support to the employer's contention that the workman had voluntarily resigned.

11. Now, it is no doubt true that there is no resignation in writing. Shri Cuncolienkar has relied upon the rulings reported in 1991 LIJ-2444 (Cal. D. B.). In this case, it has been observed that in the appropriate case, an employer may be permitted to resign from services **orally**. However, it is always safe and desirable to get set the decision of resignation expressed and recorded in writing, more so when the employer is fairly educated and is capable of expressing his desire in writing. However, in the present case the parties did not appear to be well educated and hence there is no resignation in writing. That circumstance would not dislodge the employer's contention that the workman who is not well educated orally intimated his desire of resignation since he wanted to start his own business.

12. Shri Cuncolienkar has also made a grievance that the Employer should not be allowed to set up a new case of resignation, in as much as in the Conciliation Proceedings before the Dy. Labour Commissioner, the Employer had taken a stand that the workman had abandoned his services. However, it will have to be remembered that the proceedings before the Labour Commissioner are of an administrative nature, and they are not judicial proceedings. Hence, parties cannot be bound by whatever statement they had taken in the conciliation proceedings. Besides, it seems that the Employer had loosely used the word abandoned in place of resignation or retirement. I, therefore, reject the submission made by Shri Cuncolienkar in this behalf.

13. Thus, after having anxiously weighed the oral and the documentary evidence led by the parties, I have come to an irresistible conclusion that this is a case where workman had voluntarily resigned from services, and hence it cannot be said that his services were illegally terminated by the Employer-Co., without following the legal procedure laid down in the I. D. Act. I, therefore, answer the issues accordingly and pass the following order:

ORDER

1. It is hereby declared that party-I (Shri Minguel Colaco) voluntarily resigned from services w.e.f. 1-9-85 and hence he is not entitled to any relief whatsoever.

2. No Order as to cost.

3. Government be informed of this award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/2/87-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 10th June, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/11/87

Shri Vijayan E. G. &
Shri Suresh H. B. — Workman/Party I

V/s

M/s Electro Engineering
Enterprises — Employer/Party II

Workmen represented by Shri Subhas Naik.

Employer represented by Adv. M. S. Bandodkar.

Panaji, dated 21-4-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Lieutenant Governor of Goa, Daman and Diu, by his order No. 28/2/87-ILD dated 26th March, 1987 has referred the following issue for adjudication by this Tribunal:

"Whether the action of Management of M/s Electro Engineering Enterprises, Zuarinagar-Goa, in terminating the services of S/Shri Vijayan E. G. and Suresh H. B. both Electricians with effect from 20-9-1984 is legal and justified?

If not, to what relief the workmen are entitled to.?"

2. On receipt of this refence, a case at IT/11/87 was registered and notices were issued upon both the parties, in response to which they appeared and submitted their pleadings.

3. It is the case of Party I-Workman namely S/Shri Vijayan E. G. and Suresh H. B. (hereinafter called as the 'Workmen'), that they were serving with Party II-M/s Electro Engineering Enterprises, (hereinafter called as the 'Employer'). However, their services were abruptly terminated by the employer on 20-9-1984 without assigning any reasons. Prior to the date of termination, Shri Vijayan was serving for about 6 years while Shri Suresh had put in 2 years of service. Thus, before the order of termination, both the workmen had put in more than 240 days of service. It has been averred that the employer could not have terminated the workmen's services without assigning any reason and without paying them their legal dues. No enquiry was held against them and on that ground also, the order of termination is bad in law. Hence, they have claimed that they should be reinstated in service with full back wages, and continuity of service and other incidental reliefs.

4. Party II by its Written Statement at Exb. 3 resisted the Workmen's claim contending among other grounds that Shri Vijayan was a temporary trainee as stated in the letter of appointment dated 6th Feb., 1984 and he was paid a stipend of Rs. 510/- per month. However, the employer was not saitisfied with his work and hence his services were terminated in terms of the letter of appointment. As far as the other workman by name Suresh is concerned, he was appointed as a temporary electrician by a letter dated 31st March, 1984 for a period of 5½ months. He was being paid a salary of Rs. 510/- per month. After the period of 5½ months was over, his services were terminated as per one of the clause in the appointment letter, thus, his services were terminated in terms of the letter of appointment and hence, it has been contended that he could not raise any industrial dispute. Party II has also controverted the other averments made by the workmen in their statement of claim and has finally prayed that the reference be rejected.

5. Thereafter, the workman filed a rejoinder at Exb.4 and my learned predecessor Shri S. V. Nevagi framed the necessary issues at Exb.5. Thereafter the case was posted for hearing. On behalf of Party I, Oral as well as documentary evidence was led and thereafter the matter was posted for employer's evidence. However, since it was represented to the Tribunal that there was every possibility of a settlement, the case was adjourned from time to time, and finally the learned representatives of both the parties submitted before the Tribunal that the dispute has been settled and accordingly they have filed the terms of settlement which have been duly recorded and verified at Exb.24. I have anxiously gone through the terms and have found that the settlement is certainly in the interest of the workmen. In view of this state of affairs, I accept the submission made by the learned representatives of both the parties and pass the following consent award.

ORDER

1. It is agreed between both the parties that the Party II shall pay a sum of Rs. 5000/- (Rupees five thousand only) to each workman, namely, Shri Vijeyan E. G. and Shri Suresh E. B. in full and final settlement of all claims arising out of their employment including their claims for reinstatement.

3. Since the workmen are not in station, it is agreed between both the parties that party No. II shall issue a cheque in the name of each workman for Rs. 5000/- each and the Union shall issue receipt to Party No. II on behalf of workmen.

4. The Party No. I acknowledges the receipt of two cheques of Syndicate Bank, Margao, Nos. 847536 and 847537 for Rs. 5000/- each favouring Shri Vijayan E. G. and Shri Suresh E. B. respectively.

No order as to costs.

Inform the Government accordingly, about the passing of the award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Labourt Court

Order

No. 28/52/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 10th June, 1992.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/78/89

Shri Anthony Dias — Workman/Party I

V/s

M/s Goa Shipyard Ltd. — Employer/Party II

Workman represented by Shri Subhas Naik.

Employer represented by Adv. P. J. Kamat.

Panaji, Dated 23-4-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/52/89-LAB dated 26th September, 1989 has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Goa Shipyard Limited, Vasco-da-Gama, in terminating the services of Shri Anthony Dias, Fitter, with effect from 16th Feb., 1984 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of this reference a case at No. IT/78/89 was registered and notices were issued to both the Parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Anthony Dias, (hereinafter called as the 'Workman'), has filed his statement of claim (Exb.2) wherein he has averred thus:

4. Party II-M/s Goa Shipyard Limited, (hereinafter called as the 'Employer') is a Government of India undertaking situated at Vasco-da-Gama, Goa. It has employed approximately 3,000 workmen and it manufactures barges, trawlers, Navy Ships and Vessels as well as other Ships. It also undertakes repairs and maintainance work of Ships and Steamers. Shri Anthony Dias-Workman first employed as a Fitter in a semi-skilled low grade on 10-2-1976. After six months he was confirmed. In due course, he was promoted to semiskilled high grade w.e.f. 1-12-1980 and to the post of 'Marine Fitter skilled High Grade' w.e.f. 1983. In the year 1978 or so, the workmen of Party II formed an Union known as Shipyard Employees Union. The present workman was one of the members of the said Union. He was also a member of the Executive Committee. Shri S. R. Kulkarni from Bombay is the leader of the said Union. However, on or about 16-3-1982, the workman resigned from the said Union and he also resigned the post of a member of Executive Committee since he was not very much happy with the functioning of the Union. Along with the workman, many other members resigned. However, thereafter the relations between Shipyard Employees Union and the Shipyard Workers' Union became strained. The Goa Shipyard Workers' Union by forming a new Union, had exercised their constitutional right to form a trade union and highlighted the failure on the part of the Shipyard Employees' Union as well as the said union did not submit the accounts to the members of the Union. On or about 26-2-1983 when the present workman was doing his job at about 7-45 a.m. some of the workers led by Puti Gaonkar who was then General Secretary of the Shipyard Employees Union surrounded the present workman and started man-handling him and hence took shelter in the nearby office and thereafter fled away. Some other workers were also assaulted by the said gang who were taken to the Hospital for treatment. In respect of this incident, a complaint was lodged in the Police Station in pursuance of which the charge sheets were issued against the workman who were eventually arrested. The criminal case filed against Puti Gaonkar and others is still going on in the Criminal Court at Vasco. Three days threafter, the workman reported for work. However, the Company issued charge sheets to all the workmen who were involved in assaulting Anthony Dias, including Puti Gaonkar. The employer also issued charge sheet to the present workman and some others who were in fact the victims of assault. Thereafter, an enquiry was held and the present workman and one Ramdas Borkar were found guilty of misconduct. The Employer accepted the findings of the Inquiry Officer and ultimately terminated the services of the present workman and Ramdas Borkar w.e.f. 16-2-1984. It has been averred that the findings recorded by the I. O. are false and perverse and hence the order of termination passed on the said findings is not legally tenable. It is by way of victimisation for their trade union activities. Hence, the workman has prayed that the order of termination should be set aside and he should be reinstated in service with full back wages and other incidental reliefs.

5. Party II-M/s. Goa Shipyard Ltd., Employer by its written statement at Exb. 3 resisted the workman's claim practically on all grounds which have been elaborately detailed in 47 paragraphs of its Written Statement at Exb. 3 since the dispute raised by the workman has been ultimately settled, I do not think that I should reproduce all the contentions taken up by the Employer. Instead, it is more than enough to state in brief, that the employer has tried to justify the order of termination which has been passed against the present workman on several grounds.

6. Party I-Workman also filed a rejoinder (Exb. 4) wherein he controverted all the contentions taken up by the employer and reiterated his claim made in Exb. 2.

7. On these pleadings, my learned predecessor (Shri S. V. Nevagi) framed the necessary issues at Exb. 5 and there-after the matter was posted for final hearing. During the course of hearing, the employer produced the enquiry papers and thereafter the case was posted for recording oral evidence. However, on 21-4-1992 Shri Subhas Naik and Shri P. J. Kamat, the learned representatives of both the parties submitted before this Tribunal that the dispute between the parties has been resolved by settlement and accordingly they have filed the terms of settlement at Exb. 9 and have submitted that in view of this settlement a consent award be passed in this case. I have gone through the terms of settlement and I have found that the same is certainly in the interest of the workman. Hence, I accept the submission made by the learned representatives of both the parties in their application at Exb. 8 and proceed to pass a consent award in terms of Exb. 9.

ORDER

Terms of settlement:

1. It is agreed between the parties that the workman shall be paid a sum of Rs. 41,426/- (Rupees forty-one thousand four hundred twenty-six only) towards full and final settlement of all his claims against the Company.

2. It is agreed between the parties that in view of the payment of the sum in clause (1) above, the workman shall have no claim of whatsoever nature, including reinstatement, against the Company and all the claims of the workman, including those involved in the reference No. IT/78/89, are conclusively settled.

3. It is agreed between the parties that the amount in clause (1) above includes gratuity and other dues of the workman.

4. It is agreed between the parties that the Company shall not deduct advance tax from the said amount as the said amount is paid towards the legal dues of the workman. If any claim arises as regards the payment of Income Tax, the same shall be dealt with by the

workman directly.

6. It is agreed between the parties that the amount in clause (1) above has been paid to the workman before 11-04-1992.

7. No order as to costs. Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/11/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 13th February, 1992.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon,ble Presiding Officer)

Ref. No.IT/22/91

Workmen — Party I/Workmen

V/s.

M/s Safe (x) services.
Contractor of M/s. Hindustan
Ciba Geigy Ltd. — Party II/Employer

Workmen represented by Shri R. Mangueshkar.
Employer represented by Adv. P. J. Kamat.

Panaji: Dated 20-1-1992

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28-11-91-LAB dated 22-4-1991, has referred the following issues for adjudication by this Tribunal.

"whether the action of the management of M/s Safe (x) services, contractor of M/s. Hindustan Ciba Geigy Ltd. Corlim in refusing to concede to the following demands of the workmen represented by Goa Trade & Commercial Workers' Union, is legal and justified?

If not, to what relief the workmen are entitled ?"

2. The demands made by the workmen were in regard to the grades of pay scales as per the designations and nature of the work, flat-rise and fitment, Variable Dearness Allowances, House Rent Allowance, Fixed Dearness Allowances, travelling/Sundry Allowances, Uniforms/ washing allowances/washing soaps, Leave Facilities, Overtime Payments, change of existing service conditions and issuance of letters of appointment and confirmation.

3. On receipt of this reference, a case at No. IT/22/91 was registered and notices were issued to both the parties in response to which they appeared and submitted their pleadings which can be found at Exb. 4, 6, & 7. On the basis of the pleadings, I framed the necessary Issues at Exb. 8 and thereafter the matter was posted for hearing. However, in the meantime, it was submitted to the Tribunal that the discussions were going on between the union leaders and the management and there was every possibility of resolving the dispute by a settlement. Eventually, on 17-1-92, both the parties submitted a settlement deed which has been duly verified. The learned representatives for both the sides submitted that in view of this settlement a consent award be passed. I have gone through the terms and conditions of this settlement and I have found that they are certainly in the interest of the workmen and hence I accept the suggestion made by both the sides and pass the following consent award.

ORDER

The Terms & conditions of the settlement

1. With effect from 1-1-92, the workmen shall be paid daily rate of consolidated wage as shown in the annexure. The maximum rise is Rs. 10/- per day and minimum rise is Rs. 7.50 per day.

2. It is also agreed that the workmen shall be paid an ex-gratia amount for attendance put in by them during the period 1-7-90 to 31-12-91. The ex-gratia amount shall be calculated at the rate of daily additional revision granted from 1-1-92 per day's attendance for the above period.

3. The workmen listed at serial No. 10 to 20, to the annexure, (appended to this Award) shall vacate the accommmodation provided to them in the factory premises of the Principal Employer on or before 31-1-92. In consideration thereof each of them shall be paid one time lump sum of Rs. 500/- simultaneously.

4. As a result of this understanding the charter of demands pending adjudication in reference IT/22/91 stands settled in full, and the Goa Trade & Commercial Workers' Union shall immediately withdraw the reference IT/22/91 as settled, pending before the Industrial Tribunal Goa.

5. ANNEXURE

Statement showing revision in wages W. E. F. 1-1-1992.

Sr. No.	Name	Present Daily rate of consolided wages	Revision granted per day	NewDaily rate of consolidad wages
		Rs.	Rs.	Rs.
1	2	3	4	5
1.	Mr. Manu Naik	23.00	10.00	33.00
2.	Mr. Anta Ghadi	22.00	10.00	32.00
3.	Mr. Purushottam Sawant	21.00	10.00	31.00

1	2	3	4	5
4.	Mr. Yeshwant Zhalmi	21.00	10.00	31.00
5.	Mr. Mahadeo Dhulapkar	21.00	10.00	31.00
6.	Mr. A. Narsayya	21.00	10.00	31.00
7.	Mr. Soda Triptayya	21.00	10.00	31.00
8.	Mr. Rohidas Usgaonkar	20.00	10.00	30.00
9.	Mr. Achhut Naik	20.00	10.00	30.00
10.	Mr. Shivappa Chimalgir	18.50	9.00	27.50
11.	Mr. Shaukat Ali	18.50	9.00	27.50
12.	Mr. Nazir Kundwadi	18.50	9.00	27.50
13.	Mr. Parashram Yerzari	18.50	9.00	27.50
14.	Mr. Ibrahim Yekundi	18.50	9.00	27.50
15.	Mr. Mallapa	18.50	9.00	27.50
16.	Mrs. Parawwa Chimalgir	13.50	7.50	21.00
17.	Miss Mirajabee Yekundi	13.50	7.50	21.00
18.	Mrs. Bibijan Nadaf	13.50	7.50	21.00
19.	Miss Amina	13.50	7.50	21.00
20.	Mrs. Satyawa	13.50	7.50	21.00

6. No order as to costs.

7. Inform the Government accordingly about the passing of the consent award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/36/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 13th February, 1992.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/36/90

Shri Elvis Gomes —Workman/Party I

V/s

M/s Penthouse builders
Private Limited — Employer/Party II

Employer represented by Adv. M. S. Bandodkar

Panaji, Dated 22-1-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Section 10 of the Industrial Disputes Act, the Government of Goa, by its order No. 28/36/90-LAB dated 25th July, 1990, has referred the following issues for adjudication by this Tribunal:

"1. Whether Shri Elvis Gomes, Personnel Officer of M/s Pent-house Builders Private Limited, Penthouse Beach Resort Colva, is a workman under section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

2. If so, whether the action of the management of M/s Pent-house Builders Private Limited, Penthouse Beach Resort, Colva, in terminating the services of Shri Elvis Gomes, Personnel Officer, with effect from 2-1-1990 is legal and justified?

3. If the answer to (2) above is negative, to what relief the workman is entitled?".

2. On receipt of this reference, a case at No. IT/36/90 was registered and notices were issued to both the parties. However, the notices sent to Party I-Workman were returned with an postal endorsement that the addressee had left Colva. The notice was sent more than once on his address but it met with the same fate and ultimately even the Party II-Employer was not aware of the whereabouts of Party I. Thereafter, Shri M. S. Bandodkar, the learned Advocate for Party II submitted before this Court on this day that the dispute between the parties has already been resolved and to support his submission in this behalf, he has submitted one receipt under the signature of the workman which shows that after receiving Rs. 10,248/- as full and final settlement of his account the workman stated that he had no claim of whatsoever nature including reinstatement or re-employment against Party II. In view of the clear and unequivocal statements made by the workman in Exb.5, it has been submitted by Shri Bandodkar that the workman does not seem to have any interest in proceeding with this reference and hence probably he seems to have chosen not to appear in this proceeding.

3. In view of this state of affairs, I hold that the reference made by this Government does not survive for consideration and the same deserves to be disposed of with no order as to costs. I, therefore, pass the following order:

ORDER

The case stands disposed of with no order as to costs.

The Government be informed accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/24/89-ILD

The following Award given by Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 13th February, 1992.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT. PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/44/89

Workmen —Party I/Workmen

V/s

M/s Polytainer Industries —Party II/Employer

Workmen represented by Shri R. Mangueshkar.

Employer represented by Adv. B. G. Kamat.

Panaji, Dated 27-1-1992.

AWARD

In exercise of the powers conferred by Sub. Section (2) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/24/89-ILD dated 30th June, 1989 has referred the following issue for adjudication by this Tribunal:

SCHEDULE

"Whether the following demands raised by the Goa Trade and Commercial Workers' Union before the management of M/s Polytainer Industries, Corlim, are legal and justified?"

The demands made by the Workmen-Party I, relates to; i) Flat-rise, pay-scales and grades, ii) Seniority Increments, iii) House Rent Allowance, iv) Fixed Dearness Allowance, v) Variable Dearness Allowance, vi) Travelling and Sundry allowance, vii) Uniforms and Washing Allowance, viii) Leave facilities and ix) Overtime and Compensatory Off.

2. On receipt of this reference a case at No. IT/44/89 was registered and notices were sent to both the parties, in response to which, they appeared and submitted their pleadings which can be found at Exb.2, 3 and 4. On going through the pleadings, I have framed the issues at Exb.5 and thereafter the case was posted for recording of the evidence. However, on the adjourned dates of hearing, it was submitted that there was every possibility of settling the dispute and hence the case was adjourned and finally on this date, the learned representatives of both the sides informed the Court that the dispute has been resolved by a settlement and accordingly they have filed the settlement deed and submitted that in terms of this settlement a consent award be passed. I have gone through the terms and conditions of the settlement and I have found that they are certainly in the interest of Party I-Workman and hence I accept the submissions made on behalf of both the sides and pass the following consent award in terms of settlement.

ORDER

TERMS OF SETTLEMENT

1. The gradation vis-a-vis revised pay-scale and fitment into revised pay-scale of the existing workmen of party No. II will be as set out below, effective from 1st April, 1991.

Sr. No.	Name of worker with Grade	Revised pay-scale	Fitment (Rs. per M)
1.	Mahadev Bhamaiker G-I	250-15-400-20-600--25-850-30-1150	280
2.	Vithal Gaonker G-I	— do —	280
3.	Francis Gracias G-II	150-10-300-15-450--20-650-25-900	240
4.	Kashinath Gaude G-II	— do —	240
5.	Manoj Velingker G-II	— do —	240
6.	Prabhakar Ghadi G-II	— do —	210
7.	Krishna Raul G-II	— do —	200
8.	Ramoldin Fernandes G-II	— do —	170
9.	Leela Gaonker G-II	— do —	170
10.	Yashree Naik	— do —	150

Annual increment permissible in the above scale of pay will fall due on 1st April '1992 and thereafter on 1st of April of every calendar year.

2. Each of the workmen shown in (1) hereinabove will be paid Allowances as set out below effective from 1st April, 1991.

Sr. No.	Nature of Allowance	Rate of Allowance per Month (Rs. p.m.)
1	2	3
1.	Fixed Dearness Allowance	Rs. 250-00
2.	Travelling Allowance	Rs. 75-00
3.	Washing Allowance	Rs. 15-00

3. Each of the worker shown in (1) herein above will be paid Variable Dearness Allowance at the rate of Rs. 1.00 per point rise over and above All India Consumer price Index 570 (1960-100). The revision in Variable Dearness Allowance will be paid on 1st April, July, October and January. The rate of Variable Dearness Allowance for quarter beginning 1st April '1991 will be Rs. 403 p.m.

4. all other demands are deemed to have been dropped and existing practices in respect of providing uniform, leave facilities, Overtime working and compensatory off in terms of settlement dtd. 15th July, 1985 will continue.

5. With effect from 1st January '1992, the payment of interim relief of Rs. 100.00 to each worker will be discontinued by Party No. II

6. All the arrears of wages accruing to each of the workers from 1st April, '1991 to 31st December, 1991 will be paid by 31st March, 1992, by Party No. II. In case of failure to pay the arrears as a above, simple interest at the rate of 18% p.a. will be paid till the payment of entire arrears or balance thereof, remaining due.

7. Each of the workers will be paid an amount of Rs. 3,500-00 as ex-gratia payment, subject to pro-rata deduction for absence and/or leave without pay during the period from 1st April, 1988 to 31st March, 1991, which said amount will be paid by 31st March, 1992.

8. This settlement will be in force till 31st December, 1995.

No order as to costs.

inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 21st October, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/23/83

Shri Joaozinho Fernandes — Workman/Party I

V/s

M/s Agencia Geral Pvt. Ltd.,
Vasco —Employer/Party II

Workman represented by Shri B. G. Kamat

Employer represented by Shri G. K. Sardessai

Panaji,Dated: 14-10-92.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called as the Central Act 14 of 1947), the Government of Goa, Daman and Diu by its order No. 28/51/82-ILD dated May 27, 1983 has referred the following issues for adjudication by this Tribunal.

"Whether the action of M/s Agencia Geral Pvt. Ltd., in terminating the services of Shri Joaozinho Fernandes, Accountant w.e.f. 30-4-82 is legal and justified?

If not, to what relief the workman is entitled to?"

2. On receipt of this reference, a case at No. IT/23/83 was registered and notices were issues to both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Joaozinho Fernandes (hereinafter called as workman) has filed his statement of Claim, wherein he has averred as follows:

Since 1-5-1955, the workman was employed by the then V. M. Salgaonkar e Irmao Ltd. - a Sociedade per quotas de responsabilidade Limitada formed under the Portuguese Commercial Code and registered as a Private Limited Company under the Companies Act, 1956 under the name and style V. M. Salgaoncar & Brother Pvt. Ltd. However, on 20-5-64, M/s V. M. Salgaoncar & Brother Pvt. Ltd. transferred the Workman's services to party II-M/s Agencia Geral Pvt. Ltd. The Workman was serving as an Accountant continuously without any blemish till his services were terminated w.e.f. 30-4-1982 by the Employer-Co., under its letter dated 29-4-1982. It has been alleged in the order of termination that the Employer-Company had lost confidence in the Workman. At the time of termination of his services, the Workman was drawing a salary of Rs. 1,280/- p.m. and House Rent Allowance at Rs. 100/- p. m. It has been alleged that the order of termination is illegal and inoperative since the same is by way of punitive discharge, it has been passed without following the principles of natural justice and/or without holding any inquiry. Hence, it has been prayed that the said order should be set aside and, the workman should be reinstated in service with other incidental reliefs.

4. Party employer Company by its written statement resisted the workman's claim contending as follows:

Party I-Shri Joaozinho Fernandes is not a workman within the meaning of Section 2(s) of the I. D. Act, 1947 by virtue of his employment in the supervisory and administrative capacity, and drawing a salary exceeding Rs. 500/- p. m. To have an 'Industrial Dispute' under Section 2(k) of the Act, it is essential that the person raising such a dispute should be a 'workman' within the meaning of the said Act. Since Shri J. Fernandes was not a workman, there existed no Industrial Dispute which could have been adjudicated by this Tribunal and hence, this Tribunal has no jurisdiction to decide this reference. Hence, it has been contended that a preliminary issues be framed for determining the jurisdiction by this Tribunal to decide this reference. In para 5 of the written Statement, it has been contended that the Employer-Company has lost confidence in the workman-Shri Joaozinho Fernandes and hence, the Employer was forced to terminate his services. The Employer-Company has also detailed the circumstance in which it lost confidence in Shri Joaozinho Fernandes. It has been denied that the workman had rendered unblemished services as alleged by him. On the other hand, there used to be lapeses in his part which were condoned on his assurance to improve in future. It is true that the last salary drawn by Shri J. Fernandes was Rs. 1280/- p. m. inclusive of House Rent Allowance. Finally, it has been contended that the order of termination is perfectly legal and valid.

5. Thereafter, Shri J. Fernandes filed a rejoinder in which he controverted all the contentions raised in the written Statement and reiterated his stand taken in the Statement of Claim.

6. On these pleadings, my learned Predecessor, Dr. Renato DeNoronha framed the following preliminary issues:

"Whether the Order of Reference is bad in law and not maintainable for the reasons mentioned in para 3 of the written Statement ?"

My finding on the above issue is as follows, for the reason stated below

1. In the affirmative.

REASONS

7. For determining the above referred issue, it has been treated as preliminary issue, parties have led both oral and documentary evidence. Since the burden of proving its contention in regard to status, of party I-Shri J. Fernandes, the Employer-Company first examined Shri A. V. Chirpurkar who is an officer in charge of party II-Company. On behalf of party I Mr. Joaozinho Fernandes examined himself and both the parties has produced voluminous evidence in proof rival contention. The evidence was led before my learned.Predecessor and thereafter, the case was adjourned. On the understanding of the parties, there was possibility of an amicable settlement., however, it seems that effort in that behalf failed., and hence the matter was posted for arguments. Shri B. G. Kamat for Party I and Shri G. K. Sardessai for party II have filed elaborate written arguments and on considering the same, I now proceed to consider the above referred issue which goes to the root of the case. I mean to say that, if it is found that party I is not a workman as defined in the I. D. Act, than it follows that there would not be any industrial dispute which could be adjudicated by this Tribunal and hence the reference will have to be rejected for want of jurisdiction. If on the other hand, it is found that party I is a workman, than the case will have to be decided on merits.

8. Now, before proceeding to consider the legal aspects of this case, I think it is necessary to state in brief some of the facts which are either admitted or which can otherwise be taken as duly approved by evidence on record. Now, it is a common ground that Party I-Workman, first started serving with M/s V. M. Salgaoncar & Bros Pvt. Ltd. from 1-5-55. However, w.e.f. 20-5-64, M/s V. M. Salgaoncar & Brother Pvt. Ltd. transferred his services to the present Employer-Company i.e. M/s Agencia Geral Pvt. Ltd.. It is also a common ground that Shri J. Fernandes was the head of the Account section. There was one clerk by name Mr. Colaco who was serving under him. It is also a common ground as discoded in the Statement of Claim that his last salary was Rs. 1280/- plus H.R.A. Rs. 100/-. It is also an admitted fact that the Employer-Company terminated his services w.e.f. 30-4-1982 and the reason attributed for termination was 'No Confidence' in the employee. Exb.7(E) is a copy of the order of termination of the workman. It also shows that the employee was given 3 months salary in view of notice and he was directed to hand over charge to Shri A. V. Chirputkar and collect his dues. It is on this established factual aspects, I now avert myself to the submission made by the learned advocates for both the sides.

9. Now, the first contention and perhaps, the only contention which has been taken by the Employer-Company and which goes to the root of the case is in substance to the effect that Shri J. Fernandes is not a workman as defined in the Industrial Dispute Act and hence, there is no industrial dispute which can be adjudicated by this Tribunal. Now, section 2(s) defines "Workman", but the definition does not include any such person-

(i) *****

(ii) *****

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employer in a supervisory capacity draws wages exceeding Rs. 500/- (Rs. 1600/- after the amendment by Act 46 of 1982) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

10. Now, the word "Workman has come up for interpretation before th Supreme Court as well as before several other High Courts and hence, considering the ratio in the said rulings, we will have to determine as to whether Shri J. Fernandes falls within the defination of Workman.

11. "Now, the learned advocates for both the sides has relied upon several rulings of which, a reference will have to be made in brief. Shri B. G. Kamat for party I has relied upon the rulings reported in AIR 1985 Supreme Court 985, Arkal Govind Raj Rao, Appellant v/s Ciba Geigy of India Ltd., Bombay, Respondent, wherein the head note runs thus:

"where an employee has multifarious duties and a question is raised whether he is a workman or some one other than a workman the court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the loss of some additional duties must be rejected while determining the status and character of the person concerned. The definition of the expression workman clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity."

12. In AIR 1964 Supreme Court 1522, South Indian Bank Ltd., v/s R. Chacko, it has been observed thus:

"There is a distinction between accountants and only officers and accountants who are merely senior clerks with supervisory duties. A consideration of the evidence on the record as regards the duties actually performed by a particular workman may lead to the conclusion that he was merely a senior clerk, doing mainly clerical duties, and going by the designation accountant and was in reality a workman as defined in the Industrial Dispute Act and doing an element of supervisory work. Such a person, therefore, does not cease to be a workman on his being appointed as an accountant".

13. In AIR 1988 S. C. 329, National Engineering Industries Ltd., v/s Shri Kishan Bhageria and others, it has been observed that Internal Auditor who are not doing supervisory work by checking up on behalf of the employer and having no independent right or authority to take decision is not a workman within the meaning of s.2(s) of I.D. Act.

14. In a ruling reported in AIR 1975 s.c. 1898, Punjab Co-op. Bank Ltd., v/s R. S. Bhatia, it has been observed that Accountant who used to sign salary bills of the staff did not make him, "employed mainly in a managerial or administrative capacity." In the case of S. B. Kulkarni v/s Indian Red Cross Society reported in 1987 LLJ on page 752, it has been observed by Their Lordships of our High Court that Chief Analytical Chemist is a workman within the

definition of s.2(s) of the I. D. Act. His Lordship of the Delhi High Court in the case of Mathur Aviation v/s Lt. Governor, Delhi and others had observed that pilot of a plane is a workman. Similarly, in the case of (smt.) Chandrawati Chunilal Shah v/s Managing Director, Hindustan Antibiotics Ltd., (1985 F.L.R. 352), it has been ruled by single Judge of our High Court that Applicant-Chemist under the Drugs Act is a workman. Finally, Punjab and Haryana High Court in the case of Food Specialities Ltd., v/s Labour Court, Bhatinda, and another (Vol. 73. LLJ 396) have taken a view that a 'Food Inspector' or 'Field Inspector' is a workman in the definition of workman in I.D. Act.

15. Now, Shri Sardessai has also relied upon several rulings of this Supreme Court and other High Courts, by referring to the evidence on record. I will, therefore, refer the said ruling at the appropriate place in the Judgement in the next paragraph.

16. Now, I have already pointed that Shri J. Fernandes was serving as the Head in the Accounts Section. It is the contention of Shri Sardessai that the duties, which Shri F'des was performing; were of supervisory character and his salary was more thatn Rs. 500/- p.m. and hence, it has been urged by Shri Sardessai that Shri J. Fernandes does not fall within the definition of "Workman" as laid down in sub-clause (IV) appended to Sec. 2(s) of the I.D. Act. Now, whether he was performing Supervisory duties is a matter for my consideration in this judgement. However, the second ingredient of sub clause (IV) of Sec. 2(s) has been fully established. Now, significantly, Mr. Fernandes has pretended ignorance by saying in his deposition that he does not remember what was his last salary, when his services were terminated (vide page 11 of his statement). However, in the claim statement itself, Mr. Fernandes has clearly admitted that he was drawing wages at the rate of Rs. 1280/- p.m. in addition to HRA of Rs. 100/-. Sub-clause (IV) of section 2(s) was not amended in the year 1982 and as such, it follows that in so far as the salary of Mr. J. Fernandes was more than Rs. 500/-, the second ingredient to the said clause is fully satisfied.

17. Now, as a Head of the Account Section, Shri Fernandes was doing multifarious duties which have been elaborately reproduced in para 8 of the written Argument submitted by Shri B. G. Kamat on his behalf. I would briefly reproduce the said duties.

(a) He was dealing with day-to-day matters i.e. making payments of bills, vouchers, writing cheques, cash receipts, General vouchers & employees expenses vouchers, daily cash book, to bring cash from bank, to maintain custody of safe (vide Exb. 20A, E-23 and E-25 colly).

(b) to prepare paysheets and checking the same, vide (Exb. E-4 and E-24)

(c) To file monthly return under the Income Tax Act (Exb. E-22)

(d) To write Provident Fund books and maintain all its records.

(e) To issue certificates of deduction of Provident Fund and Salary (Exb. E-13)

(f) To maintain leave record (Exb. E-7)

(g) To prepare draft balance sheets and profit and loss account and forwarding the same to the auditors of Employer Company (Exb. W-4 and E-11 colly).

(h) To write formal letters or covering letters to Registrar of Company (Exb. 17 colly.).

(i) To prepara estimate of disbursement, and obtaining funds and matters connected therewith including correspondence about the same after obtaining instructions from superiors. (Exb. W-1)

(j) To obtain draft pay orders from bankers after obtaining approval from Company for purchase thereof (Exb. E-16 colly).

(k) To deal with income tax Dept.. (Exb. E-5, E-6, E-10. E-21. E-14, E-15).

(l) to make correspondence of routine nature with customers in connection with accounting after obtaining approval from the superiors. (Exb. E-8, E-18 and E-19)

18. Now, the aforesaid duties enumerated by Shri B. G. Kamat in his written arguments are perfectly correct. I will, therefore, proceed to find out on that basis whether any of the aforesaid duties fall within the category of supervisory nature.

19. Now, since Shri J. Fernandes was serving as Head in the Accounts Section, it was but natural for him to deal with all the accounts matter referred to above with the assistance of one Mr. Colaco. However, the evidence on record discloses that there were two separate pay sheets; one for Officers and the other for sub-ordinates. The Employer has produced two paysheets at Exb. 3 colly. This fact has also been admitted by Shri Fernandes even in his examination in chief, wherein, he has admitted that the pay sheets are prepared in two sets, the first pay sheet pertains to the employees getting a salary of Rs. 1000/- p. m. and the second pay sheet pertains to the employees drawing the salary above Rs. 1000/ - p. m. Thus, as far as the salaries were concerned, the Employers were divided into two categories. In the estimate of Shri Sardessai, the offficers were given more than Rs. 1000/-. Hence, separate pay sheets used to be prepared for their salaries. This circumstance in the estimate of Shri Sardessai lands support to his submission that Shri Fernandes was in the category of officers.

20. Now, Shri Fernandes, even in his examination in chief has admitted that he used to counter sign the leave applications. This circumstance has a substantial relevance in determining the status of Shri Fernandes. The Employer Company has produced a bunch of as many as eight applications for leave submitted by the sub-ordinate staff, at Exb. 7. They relate to the year 1981, and were submitted by the sub-ordinate staff members and all of them were granted on the recommendation made by Shri Fernandes. His signature appears on all the 8 applications for leave submitted by the sub-ordinate staff. How, relying on this established fact, Shri Sardessai has urged that the duty performed by Shri Fernandes was of a Supervisory nature. To support his submission in this behalf, he has relied upon some rulings of which a reference will have to be made, at this junction.

21. The latest ruling of our High Court on this point is one reported in 1992, II LLJ, 378 in the case of "Shrikant Vishnu Palwankar v/s Presiding Officer, first Labour Court & Another". In para 8 of the judgement at page 381, it has been observed thus:

"When a person is working as a Supervisor, he is required to over-see the working of the Department. Since he is put in charge of the outturn of the Dept., he has to efficiently manage the men, machines & materials under his control. For this purpose, he alone is the best judge as to which person is to be spared at any given time. It is for this reason that the Supervisor, who is on the spot is expected to make a recommendation as to whether leave could be granted to any workman working in his Department. It is precisely for this reason that the authority competent to grant

leave seeks his recommendations and does not pass an order wihtout his recommendation. In my view, recommendation of leave is one index of supervisory function."

22. The second case relied upon by Shri Sardessai is also of our High Court reported in 1991, II CLI, 413 "Arvind Manikchand Doshi V/s S. V. Kotnis, Member, Industrial court, Kolhapur & Ors". In para 3 on page 415 it has been observed by His Lordship thus:

"In addition, respondent nos. 2 and 3 also relied upon documentary evidence in as much as they produced in the Labour Court an application for leave of one R. B. Kate on which there was an endorsement which shows that the petitioner had recommended leave for the said Kate which also clearly proves that the petitioner was working in a supervisory and managerial capacity and was not merely a Clerk."

23. Now, in the reported case referred to above, the evidence on record shows that there was only one application for leave which was recommended by the Employee, but even that circumstance by itself led HIs Lordship to conclude that the nature of duty performed by Employer was of a Supervisory character. The aforesaid decision is of substantial assistance to Shri Sardessai in as much as in the present case, there is not only one but as many as eight applications for leave which were recommended by Shri Fernandes.

24. Shri Sardessai has also relied upon a case reported in 1954, I LLJ, 406 "Shri Sebastian Pereira V/s Continental Drug Company Ltd., Bombay", wherein, it has been observed thus: in the head note:

"So when the head of a department of a concern had the power to sign correspondence, to pass credit notes, to pass money receipts for large amount and to grant leave to the staff working under him, it was held that he was not a workman as defined in the Act, as his duties were not merely clerical but mainly supervisory."

25. Thus, relying on the aforesaid rulings, it has been rightly pointed out by Shri Sardessai that recommendations for leave for subordinate staff is a clear pointer, to conclude that Shri Fernandes was doing supervisory work.

26. Secondly, it has been urged by Shri Sardessai that Shri Fernandes was dealing with Income Tax matters and there is voluminous evidence to support his submission in this behalf. Besides, even Shri B. G. Kamat for Shri Fernandes has also in his written Arguments referred to the said work in para. (k) wherein it has been stated thus:

(k) "To deal with Income-Tax Department including signing of papers where it was not statutory that the said papers were required to be signed by a particular person under the Income Tax Act, mostly forwarding, intimation letters and filing of returns after obtaining draft from Auditor (Exp. E. 5 colly: E-6, Exb-10, E-21, E-14 and E-15)."

27. The evidence on record discloses that all correspondence made with the Income Tax Office was signed by Shri Fernandes. He was shown correspondence addressed to the Income Tax dept., which has been signed by him and marked at Exb- W-5 (colly). Now, Shri Fernandes has admitted to have appeared before the Income Tax Officer to press for the items in the I. T. Return which was the subject matter of appeal. It is at Exb. 11. The same has been signed by him. Similarly, Exb. 12 is a letter from the Income Tax Office dated 29-7-1981 which was signed by Income Tax Officer. Exb. E-13 is another letter dated 22nd May, 1978 addressed to the Income Tax Officer which Shri Fernandes have admitted to have signed and sent. He has also admitted that the Return of Income Tax of the Company dated 31st August, 1980 was signed by him and the same can be found at Exb. 14. Exb. E-21 is an Income Tax appeal for the year 1975-76 and the assessment order. He has admitted that he signed the appeal and also appeared before the Income Tax Officer along with the Auditors Exb. 15 is also one more letter signed by him and addressed by Income Tax Office. Exb. 22 is one more letter dated 7-3-79.

28. Thus, considering the above referred documentary evidence it is abundantly clear that Shri Fernandes was looking after the Income Tax matters and he had not only signed the appeal memo but he also appeared before the Income Tax Officer to support his claim in the appeal. Under these circumstances, it has been rightly urged by Shri Sardessai that Shri Fernandes was not merely a workman but a responsible officer. He was not simply a clerk as posed by him. Shri Sardessai has placed reliance on a ruling reported in 1954 I LLJ 406 (Supra), wherein it has been observed that a Clerk is generally a person who does routine work of writing, copying or making calculations under the directions and supervision of officer. However, in the instant case, Shri Fernandes cannot be said to be merely a Clerk in as much as he himself was personally dealing with the Income Tax matters on the basis of the data supplied to him by his subordinates. As a proper representative of Party II-Employer he used to appear before the Income Tax Officer in support of the Company's claim for reduction of Income tax. Thus, all this work as pointed out by Shri Sardessai relates to a duty of a responsible Officer and not merely of a Clerk.

29. The evidence on record also discloses that Shri Fernandes used to attend to the Auditors of the Company and was furnishing to them the required information. He also used to attend the Income Tax Department along with the Auditors. Shri Sardessai has relied upon a ruling reported in 1970 II LLJ, 590 (Burmah shell Oil Storage & Distribution Company of India Ltd., V/s The Burmah shell Management Staff association and others), wherein it has been observed thus:

"For an employee in an Industry to be workman under s. 2(s) of the Industrial Disputes Act, it is necessary that he must be employed to do skilled or unskilled manual work, supervisory work, technical work, or clerical work. If the work done by an employee is not of such a nature he would not be a workman

If every employee of an Industry was to be a workman except those mentioned in the four exceptions, there four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an Industry except in cases where he was covered by one of the exceptions. The specification of the four types of work obviously is intended to lay down that an employee is to become a workman only if he is employed to do work of one of those type, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman' without having to resort to the exceptions."

30. The third circumstance relied upon by Shri G. K. Sardessai is to the effect that Shri Fernandes used to prepare Profit and Loss statements which were to be submitted to the concerned authorities. Now, Shri Fernandes even in his examination in a chief has admitted that he used to prepare the drafts of Annual Balance Sheets which were to be sent to the Auditors for approval. In his cross examination, the balance sheets for the year ending with 31st March, 1979, 1980 and 1981 were shown to him which are at Exb. 11(colly). He has admitted, "I say that on each occasion, I used to prepare eight copies of the balance sheets and one copy used to be signed by Chirputkar out of 8 copies sent to him. Thereafter, the whole set of 8 copies used to sent to V. M. Salgaonkar Pvt. Ltd. in the Secretarial Department. I used to sign on all the eight copies because I was preparing them". The aforesaid candid admissions of Shri Fernandes clearly go to show he was in charge of preparing and

submitting the balance sheets which ultimately used to be forwarded to the concerned authorities. Now, it has been urged by Shri B. G. Kamat for the workman that the balance sheets are required to be signed by the Board of Directors as laid down in Sec. 215 of the Indian Companies Act. It is no doubt true. However, the fact remain that Shri Fernandes was incharge of preparing and submitting the particulars of the balance sheets and that seems to be his prime duty as the Head of the Accounts Branch. This work of preparing balance sheets cannot be done by a mere clerk, but it must be done by some responsible officer as urged by Shri G. K. Sardessai. I, therefore, hold that this duty performed by Shri Fernandes, is certainly not of a workman or a clerk in the Accounts Office.

31. The fourth circumstance relied upon by Shri Sardessai is that Shri Fernandes used to attend to the cash transactions of the Company. This fact has also been admitted by Shri Fernandes as can been seen from para. 8 sub. clause (a) of the written Arguments submitted by Shri B. G. Kamat. Thus, Shri Fernandes used to deal with accounting matters, payment of bills, making payment of vouchers, writing cheques, writing vouchers of different types and also bringing the cash from the Bank and to maintain its custody. The evidence on record also discloses that there was an Joint Account of the Company in the Bank and Shri Fernandes was authorized to withdraw the amounts by cheques. In his cross examination, Shri Fernandes has admitted to have written four letters addressed to the Bank which are at Exb. 16 (colly). He has further admitted to have written these letters for operating joint accounts of the Company and he was one of the signatories. Now, although he has further stated that these letters were written after the approval of the Management, still the fact remains that he was authorised to sign cheques, which circumstance clearly leads me to conclude that he was not merely an Accounts clerk. The evidence on record further reveals that the daily cash book used to be written by his subordinate by name Shri Colaso and he used to write the cash book only when he used to withdraw some money for himself. I, therefore hold that this circumstance is also suggestive of the only conclusion that Shri Fernandes was a responsible Officer dealing with the Company's Bank.

32. Shri Fernandes has also admitted to have written a set of letters (Exb. E-17 Colly). they bear his signatures. He has clearly admitted that he used to write to the Registrar of the companies. Although he has further stated that this formal letters were written by him as directed by the Company, still the fact remains that the Registrar of Companies must have taken him to be a responsible person representing the Company.

33. Shri Fernandes has also admitted to have brought certain discrepancies to the notice of the Chairman. These discrepancies were committed by the Managing Director by name Mr. D'Souza and he felt it necessary to bring them to the notice of the Chairman. He has also admitted that in the matter of Accounts he used to deal with the Chairman directly. This is also one of the circumstance proving his position or status in the Company.

34. Thus, after having anxiously considered the evidence in the light of the submissions made by the learned Advocates for both the sides in their written Arguments, I have come to an irresistable conclusion that the several duties performed by Shri Fernandes were certainly of a supervisory character. Now, the position of law for determining the status of an employee as to whether he is a workman or not as defined in Sec. 2 (s) of the Industrial Disputes Act, is now well settled and the crucial test to be applied is to see as to what is the main work entrusted to the employee. In such case, it must be ascertained as to what is the main or substantial work which the employer is doing. If the nature of majority of duties performed by him discloses that he was employed to do supervisory work, though at times he is doing some technical, clerical or manual work, still it will have to be concluded that he was doing supervisory work and as such if his salary exceeds Rs. 500/-p.m., he is not covered under the definition of 'Workman' as laid down in Sec.2(s) of the I.D. Act. Thus, applying this test to the facts of the instant case, I hold that Party II-Employer has succeeded in proving its contention that Shri Fernandes was not a workman ans as such there cannot be said to be any industrial dispute, with the result that the present reference will have to be rejected for want of jurisdiction.

35. I, therefore answer the issue for determination in the affirmative and pass the following order.

ORDER

The reference stands dismissed with no order as to costs.

Government be informed about the award.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/31/92-LAB

The following Award given by the Industrial Tribunal, Goa Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 14th December, 1992.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI.

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/55/92

Workmen — Party I/Workmen
v/s
M/s Aqua Structural Pvt. Ltd. — Party II/Employer

Panaji, Dated: 18-11-1992.

AWARD

In exercise of the powers conferred by clause (d) of sub. Sec. (1) of Section 10 of the Industrial Disputes Act, the Government of Goa, by its order No. 28/31/92-LAB dated 17-8-1992 has referred the following issue for adjudication by this Tribunal.

"whether the action of the management of M/s Aqua Structurals Pvt, Ltd., Vasco, in terminating the services of the following workmen with effect from 24-5-90 is legal and justified?

1. Thomas Kutty

2. Chandra Babu

3. Baiju Narayan

If not, to what relief the workmen are entitled?

2. On receipt of this reference a case at No. IT/55/92 was registered and notices were sent by Registered post to both the parties. However, the notice sent to Party I has been returned by the postal authority, with an endorsement that Party I is not known. Party II duly received the said notice and it appeared through its Advocate Shri M. S. Bandodkar. Now, Shri Bandodkar has submitted that the workmen mentioned in the schedule to the reference had already left Goa and their whereabouts are not known even to the Employer. In view of the matter, the only course now open for me, as contemplated in Rule 10-B (9) of the Rules framed under the Industrial Disputes Act, is to dismiss this reference for want of workmen's appearance. I, therefore, pass the following order.

ORDER

The reference is hereby dismissed for default, with no order as to costs.

Government be informed.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal.

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 18th February, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/57/87.

Shri Rajendra A. Vaiganker ... Workman/Party I

V/s

M/s Marinecrete India ... Employer/Party II

Workman represented by Shri Subhas Naik.

Employer represented by Adv. G. K. Sardessai.

Panaji, Dated.: 29-1-1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 the Govt. of Goa, by its order No. 28/29/87-ILD dated 24th August, 1987 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Marinecrete India, Panaji in terminating the services of Shri Rajendra A. Vaiganker, Diver with effect from 7-3-1986 is legal and justified".

If not, what relief the workman is entitled to?"

2. On receipt of this reference a case at No. IT/57/87 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings.

3. Party I- Shri Rajendra A. Vaigenker (hereinafter called as the 'Workman') has filed his statement of claim (Exb. 2) wherein he has averred as follows.

The workman was appointed by M/s Marinecrete India (hereinafter called as the 'Employer' which carries out the business of salvage, as Trainee Diver under a letter dater 23rd June, 1984. After he joined, a bond in the sum of Rs. 5000/- for a period of two years was obtained from him. In the appointment letter, his designation was shown as Trainee Diver for a period of 6 months and he was put on a stipend of Rs. 150/-. It was then raised to Rs. 300/- p.m. The duties assigned to the workman was of speed Boat Helper, Rope Handling, Diving, Khalasi and Labour work which the workman did successfully. Then, he was transferred to Gujarat and from there to Ratnagiri where the employer had a busines of salvage. The workman was putting in 24 hours of duty right from 9.00 a.m. onwards but he was not paid any compensatory leave or over time. After satisfactory completion of the probation period; the workman was confirmed in service from 1-4-1985 and his salary was fixed at Rs. 500/- p.m. He was again sent to Gujarat and from there to Goa. There, he was required to do over time for which he was not paid. The employer was paying medical facilities to some of the members of the staff; but they were denied to the present worker. He was also not paid Bonus. Since, the workman was working for 24 hours; he and others were claiming payment for 24 hours but the employer did not accede to the workman's request. Thereafter the present workman and two others were served with termination orders. However, since the present workman was the only confirmed workman, he started challenging the order of termination, while the other two left the Company as they were not confirmed workers. It is the grievance of the workman that he was not paid his salary, over time nor any bonus, nor was he paid travelling expenses, which he had in incur while reporting for duty in Gujarat and Ratnagiri. Thereafter the employer closed his business and hence an order of termination was issued to the present workman on 10-9-85. The workman's services were terminated on the ground that he had un-satisfactory performances and also on account of closure of the firm. It is the case of the workman that after closing M/s Marinecrete India, the business of the said firm was transferred to a sister concern styled as M/s Madgaonkars and Madgaonkars and M/s Madgaonkars Salvage. It is the case of the workman that since he was confirmed in service, there was no question of any unsatisfactory performances of duty, and hence the order of termination is bad in law. Thereafter, he raised a dispute before the Labour Commissioner before whom, a settlement u/s 12(3) was arrived at, between the workman and the employer. One of the terms of settlement was to reinstate the workman in the employer's service. However, after the workman joined in pursuance of an understanding of reinstatement by the employer, he was again served with an order of termination dated 7-3-1986 without assigning any reasons. Hence the workman was thrown out, without there being any justifiable excuse and without following the mandatory provisions laid down in the Industrial Disputes Act, and hence the

workman prays that he should be reinstated in service with other legal benefits.

4. M/s Marinecrete India-Employer by his Written Statement at Exb. 4 resisted the workman's claim contending interalia as follows;

It is true that the present workman was employed as a Trainee Diver and after completion of probation, he was confirmed in service and was sent to Gujarat and Ratnagiri as also to Goa, as averred by the workman in his statement of claim. However, after the workman was confirmed; the employer found that there was a marked change in the workman's attitude in as much as he became careless and negligent whereby the management was required to warn him often. However, the employer found that there was no possibility of the workman's changing his attitude and hence on the ground of un-satisfactory performance' his services were terminated w.e.f. 10.9.1985. However, through inadvertence, the letter of termination was written on the letter head of M/s Madgaonkars and Madgaonkars, which was one of the sister concerns of Party II. Thereafter, the management found that the business of M/s Marinecrete India was running in losses, and there was no possibility of getting sufficient work to make profits, and hence the partners of the Firm decided to close down the Firm and its business w.e.f., 26.10.85. Accordingly, a notice of closure was duly issued; and 27 workmen on the roll of the Company collected their dues which were offered to them on account of closure. However, the present workman was not prepared to accept the closure and the compensation offered to him; and hence he raised an industrial dispute before the Commissioner of Labour, Panaji, dated 11.9.85. In the said dispute, he made a grievance that he was not paid his legal dues, as also over time and medical allowances and on that ground, he challenged the order of termination. The employer found that there was a technical defect in the order of termination, which was issued on the letter head of M/s Madgaonkars and Madgaonkars, and hence he agreed to reinstate the workman. However, in the meanwhile, the employer informed the Labour Commissioner that he had closed down its business activities and hence no useful purpose would be served in reinstatement and hence it was informed that it would be advisable for the workman to collect his legal dues like the other 27 workmen and that the management shall treat the termination as retrenchment. However, the workman insisted on reinstatement as he wanted to teach a lesson to the management and he also agreed to drop all his claims raised in his letters dated 11th and 28th of Sept., 1985. However, at the request of the Conciliation Officer, the management agreed for the compromise, the terms of which have been quoted ad-verbitum in para. 8 of the written statement. After reinstatement, the employer maintained the workman on its rolls for a considerable period of time. However, although the workman knew the real state of affairs, he insisted on alternative employment in the sister concerns. However, the management was unable to accede to his request. Infact, the management was not obliged to provide him with alternative employment in other sister concerns and besides: there was no post of a specialised Trainee Diver in the Salvage operations of other sister concerns. Hence, there was no way but to retrench the workman and accordingly, he was retrenched w.e.f. 7.3.86. The said retrenchment was treated as retrenchment on account of closure. Accordingly, the management by its letter dated 21.5.1986 informed the Labour Commissioner the real state of affairs; which has been reproduced in para. 10 of the Written Statement. Thus, it is the case of the management that the order of termination is perfectly legal and justified, and calls for no interference by this Tribunal. In para. 13 of the Written Statement the Employer has referred to the averements made in the Statement of claim and has raised appropriate contentions which have been referred to above. Hence, it has been contended that the workman's claim deserves to be dismissed.

5. Thereafter, the workman filed an elaborate Rejoinder at Exb. 5 wherein he controverted all the material contentions of the Employer and reiterated his claim made in the statement of claim. In para. 16 of his rejoinder he has given the account of the arrears, amounting to Rs. 12,325.10 which he claims from the Employer.

6. On these pleadings, my learned Predecessor Shri S. V,. Nevagi, framed the following issues at Exb. 6.

1. Whether the action of the management in terminating the services of the workman amounted to retrenchment on account of closure as alleged ?

2. Whether the management offered all legal dues by way of retrenchment compensation and the workman refused to accept them as alleged?

3. Whether the action of the management terminating the services amounts to termination simpliciter with no just and legal grounds?

4. If so, what relief is the workman entitled to?

7. My findings on the above issues are as follows; for the reasons stated below:

1. In the affirmative.

2. In the affirmative.

3. In the negative.

4. As stated in para. 12.

REASONS

8. The rival contentions of the parties to this dispute have been stated in the opening paragraphs of this judgment, which need no further repetition. Now, in order to substantiate his claim, Party I-Shri Rajendra A. Vaigankar has examined himself at exb. 10, and he has produced some documents. On behalf of Party II - Employer, its Manager, Shri Kamat has been examined at Exb. 19, and he has also poduced the necessary documents. Some of the facts which are either admitted or which can otherwise be taken as duly proved, from the evidence on record, need be stated in the beginning. It is a common ground that Party II- M/s Marinecrete India was a Partnership business of Madgavkars and it had a business of salvage. Party I-Shri Vaigankar was appointed as a Trainee Diver after he was interviewed on 15th June, 1984. His order of appointment is at Exn. 12. After he was appointed, he was sent to Gujarat, Ratnagiri and to Goa where the salvage operations were in progress. Under a letter dated 22-3-85 (Exb. 13) his services were confirmed and was paid a salary of Rs. 500/- p.m., and other allowances wherever applicable. Thereafter Party II-M/s Marinecrete India closed its business as the same was not gainful, and accordingly a notice of closure dated 24-10-85 (Exb. 20) was issued, a copy of which was sent to the Commissioner of Labour, as well as to the Secretary, Industries and Labour, Panaji. There were about 28 workmen serving in this Company; and hence after the closure, all the 28 workmen were offered their legal dues and compensation which all of them; except the present workman, accepted vide Exb. 21. The present workman was not agreeable to accept the monetary benefits given to him; although he was fully aware that the business of Marinecrete was closed w.e.f. 26-10-85. He was insisting upon his reinstatement; and hence he raised a dispute before the Asst. Labour Commissioner and ultimately, a settlement was arrived at, which is at Exb. 15. The settlement contained as many as 6 clauses. However, we are concerned with the first and second clause which are as follows:

TERMS OF SETTLEMENT

1. It is agreed between the parties that Shri Rajendra Vaigankar shall be reinstated with continuity of service on the same terms and conditions existing prior to his termination of services.

2. The workman has agreed to resume his duty with effect from 1st March, 1986.

9. Pursuant to this settlement, the workman went to resume but he was not given any work as such, as the business was already closed and eventually, he was offered a letter of termination which is at Exb. 17 but he refused to accept it. Hence, it was sent by Registered post along with an account of Rs. 1000/- on his address. However, the workman refused to accept this registered letter which was returned to the sender and thereafter an amount of Rs. 1000/- was sent by Money Order to the Labour Commissioner which he refused to accept. Thereafter, the workman raised a dispute before the Conciliation Officer wherein Party II appeared and submitted its say which is at Exb. 24. It was submitted that as a result of the closure, no work could be provided to the workman, and hence the services of the workman were terminated and he was offered all his legal dues which he refused to accept. Since there was no settlement again, before the Asst. Labour Commissioner, a failure report was submitted after which the Government was pleased to refer this dispute to this Tribunal. It is on this background of this case, I now, proceed to consider the several submissions made by the learned Advocates for both the sides. 10. Now, on reading the evidence of the workman, it is abundantly clear that he was agrieved by the first letter of termination, mostly because it was issued not by the Marinecrete but it was issued on the letter head of M/s Madgavkar and Madgavkars (Vide Exb. 14). Hence, conciliation proceedings started in which a settlement was arrived at as noted in Exb. 15. Now, it will have to be borne in mind that this settlement was arrived at on 10.2.86, while Party II-M/s Marinecrete India had stopped its business w.e.f. 26.10.85 as noted in the notice of closure at Exb. 20. The evidence on record also discloses that after the closure of business, all the workmen were offered their legal dues, and consequently except the present workman all remaining 27 workmen accepted their legal dues, as can be seen from Exb. 21. This is dated 24.10.85. Thus, in the month of October, 1985 itself, the workman was fully aware of the situation i. e. closure of business by Marinecrete. The workman even in his examination-in-chief has stated, "The Partners closed their Marinecrete Company on 24.10.85". Inspite of that,it seems that he insisted on his reinstatement, before the conciliation Officer and hence it has been stated by Shri Kamat that at the request of the Conciliation Officer, a settlement was arrived at, in which there was an agreement to reinstate the workman with continuity of service and on the same terms and conditions existing prior to his termination of services. However, the aforesaid agreement was inoperative; in as much as, it was incapable of performance; in so far as M/s Marinecrete India had stopped its business in salvage and as such there was no necessity of the present workman, who was a trained diver. There is absolutely nothing in the settlement to indicate that there was any implied understanding given by the Management of Marinecrete India that the present workman would be reinstated/ accommodated in any of the sister concerns of M/s Madgvkars. Thus, inspite of the fact that the workman knew about the real state of affairs, he insisted on his reinstatement on a job, which could not have been offered to him by the Company, as the Company had closed its main business of salvage. In view of this state of affairs, it has been rightly pointed out by Shri Sardessai that the first clause in the settlement at Exb. 15 was nugatory, so to say, void in as much as, it was incapable of performance by the employer. On this ground alone, it has been rightly pointed out that the said clause being void, and the present dispute raised by the workman is not legal ly tenable. Shri Sardessai wanted to emphasise that this Tribunal cannot go beyond the compass of a reference made by the Government, and hence when the essential term in the settlement is set at naught, the workman's position is restored to his termination, brought about by a letter dated 10.9.1985. However, the reference enables this Tribunal to adjudicate whether the action of Party II in terminating the services of the present workman w. e. f. 7.3.1986 is legal and justified. This crucial question in the case cannot be considered by this Tribunal, once it is held that the first clause in the settlement is clearly void, as it was incapable of performance. Thus, it is on this ground alone, it has been rightly pointed out by Shri Sardessai that this reference is not tenable.

11. However, even assuming for the sake of argument that the above referred submission of Shri Sardessai is not to be accepted, and the reference is held to survive, still on merits, the workman has very little case. Now, pursuant to the settlement at Exb.15, the workman went to resume on 1st March 1986. However, he was kept idle for a week or so and eventually he was offered a letter of termination, which he did not accept and hence the same was sent by Registered post, which he also refused as can be seen from Exb. 17. along with this letter an amount of Rs. 1000/- was offered to him as his legal dues which he did not accept and hence the same was sent by Money Order to the Labour Commissioner who also refused to accept it. The workman has admitted this fact in the last paragraph of his cross examination. He has further stated that thereafter, he made a representation to the Company which is at Exb. 18. Now, on reading his evidence, it clearly seems to me that the workman wants to allege that the two sister concerns namely M/s Marinecrete India and M/s Madgavkar and Madgavkars are the same. He has denied the suggestion, made to him at the fag end in his cross examination, and has attempted to assert that Marinecrete India and Madgavkar and Madgavkars are not two separate entities. However, the evidence led on behalf of Party II clearly goes to show that these two concerns are separate in business as also in other aspects, although their offices are situated at the same place. Shri Kamat in his evidence at Exb. 19 has clearly stated that both the Companies have separate muster roll, transactions and accounts. He has further stated that the employees were separate and were not interchangeable. His evidence also discloses that in the year 1983, there was a dispute amongst Madgavkar brothers. One of the two brothers by name Anand Madgavkar continued with Marinecrete India along with his father, while the other brother by name Anil opted to start new Company by name M/s Madgavkar and Madgavkars. Over and above, he has further stated that after Marinecrete India was closed, Anand Madgavkar started his business as a consultancy in salvage. He has also added that after the closure of Marinecrete India, its erstwhile Partners - Anand Madgavkar does not do the work of salvaging, and hence he did not need any Divers and hence the present workman was unsuitable for him and hence he was unable to accommodate or reinstate him. Now, whatever has been stated by Shri Kamat in this behalf has not been seriously challenged in the cross examination. Besides, since Mr. Kamat was the Manager of the Company, he is expected to know the real state of affairs, in regard to the business of Madgavkars. He was also a signatory to the settlement at Exb. 15. Thus, considering this state of affairs, it clearly seems to me that on account of closure of business of salvage, Party II had no need of workman's services as trainee Diver. It is in these circumstances, it has been rightly points out by Shri Sardessai, that the services of the present workman were terminated. Thus, this is a case of retrenchment on account of closure of business. The workman was offered his legal dues which he refused to accept as stated earlier and hence absolutely no fault can be found in the the order of termination issued against the workman. I; therefore hold that the action of Party II - management of M/s Marinecrete India, in terminating the services of Party I, is perfectly legal and just and hence I answer the first three issues accordingly.

12. That takes me to consider whether Party I - Workman is entitled to any relief. Now, in view of my findings on the first three issues, it follows that the workman could not have been reinstated in so far as the employer has closed down his business. Now, the workman seems to be aware of this position as can be seen from written Arguments submitted by Shri Subhas Naik for Party I. In the concluding para. of his arguments at Exb. 26, it has been urged that in lieu of reinstatement, he should be paid a compensation of Rs. 26,000/-. Now, in para. 13 of the written arguments, a claim for Rs. 5,930/- has been made on account of earned wages, of September, 1985, back wages, notice pay, retrenchment compensation, Gratuity and leave wages. Besides, a net amount of Rs. 20,000/- has been claimed as compensation for wrongful termination, in lieu of reinstatement and back wages from 1986 to 1992. Now, at the outset, it will have to be stated that the claim made by the workman is not only exhorbitant but the same is also unjustified. At one stage, an ex-gratia amount of Rs. 5,000/- by way of compensation was offered to the workman which he refused to accept as stated by Shri Kamat. Now, it has been contended in para. 13 of Exb. 26 that if this amount was accepted and kept in the Bank by the workman, he could have fetched a sum of Rs. 1200/- by this time. It is not convinceable as to how the workman has

quantified the amount of compensation at Rs. 20,000/-. Now, I have already pointed out that the order of dismissal is perfectly legal and valid as the employer had closed his business. Hence, it was advisable for the workman to have accepted the amount of Rs. 5,000/- which was offered to him. However, it has been rightly pointed out by Shri Sardessai that the workman was adamant and by way of prestige issue he raised a dispute and insisted on his reinstatement which could not have been done, on account of closure of business. Hence, no fault can be found with the employer and hence the workman's claim for Rs. 12,000/- as stated in para. 13 of Exb. 26 cannot be decreed. However, Shri Sardessai has very fairly conceded that his client is still prepared to offer a compensation of Rs. 5,000/- to the workman. Now, it is an admitted fact that after the refusal of his legal dues offered to him, the employer sent Rs. 1000/- by Money Order to the Labour Commissioner. However, that Money Order was returned to the Employer. Hence, this amount has not been received by the workman. I, therefore hold that this amount of Rs. 1000/- and a compensation of Rs. 5,000/- will have to be given to the workman in full and final settlement of his claim against the employer. I, therefore direct Party II- Employer to pay the aforesaid amount on or before 15th March, 1993, failing which the workman would be entitled to recover future interest at 12% over the said amount from 16th March, 1993 till the entire amount is released. I, therefore, pass the following order.

ORDER

It is hereby ordered that the action of the Management - M/s Marinecrete India, Panaji, in terminating the services of Party I - Shri Rajendra A. Vaiganker, Diver w.e.f. 7-3-1986 is perfectly legal and justified and hence he is not entitled to be reinstated in service. Instead, it is hereby ordered that Party II - M/s Marinecrete India, shall pay a sum of Rs. 6,000/- (Rupees Six Thousand Only) to Party I - Shri R. A. Vaigankar in full and final settlement of his claim on or before 15th March, 1993 failing which, Party I - Workman would be entitled to recover future interest on the aforesaid amount at 12% from 16th March, 1993, till the entire amount is released.

No order as to costs. Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal.

Order

No. 28/15/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th March 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble presiding officer)

Ref. No. IT/18/90

Kum. Adelina Soares Rebello ... Workman/Party I

V/s

M/s Margao Municipal Council ... Employer/Party II

Workman represented by Adv. R.V. Gaitonde.
Employer represented by Adv. M. S. Bandodkar.

Panaji Dated : 26.2.1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, the Government of Goa by its order No. 28/15/90-LAB dated 13th June, 1990 has referred the following issue for adjudication by this Tribunal.

1. Whether the action of the Margao Municipal Council in terminating the services of Kum. Adelina Soares Rebello, Lower Division Clerk, with effect from 30th November, 1989. is legal and justified ?

2. Whether Kum. Adelina S. Rebello who was employed on daily rated basis is entitled to be declared as permanent?

3. If so, from what date?

3. If the answer to (1) and (2) above is negative, to what relief the workman is entitled?

2. On receipt of this reference, a case at No. IT/ 18/90 was registered and notices were served upon both the parties in response to which they appeared and submitted their pleadings.

3. Party I-Kum. Adelia Soares Rebello (hereinafter called as the 'Workman') has filed a statement of claim (Exb.2) wherein it has been averred as follows:

Party I-Workman was employed by Party II-M/s Margao Municipal Council, Margao, Goa, as a Lower Division Clerk purely on temporary basis from 29-9-86 to 20-12-86 on daily wages of Rs. 25/- on condition that her services were liable to be terminated without any reason with 24 hours notice. Accordingly, her services were terminated on 20-12-1986. Thereafter she was given a break for 11 days and again reappointed on the same post from 1-1-1987 to 26th Feb., 1987 on daily wages referred to above. Thus, the process of appointment and termination was followed intermittently from time to time, as indicated in Exb. W-3. The daily wages were increased from Rs.25/- to Rs. 35/- from 27th Sept., 1988, and were subsequently increased to Rs. 42/- per day from 7-9-1989. However, the workman's services were finally terminated w.e.f. 30-11-1989 without any reason. It is the workman's case that throughout her tenure in service, she rendered satisfactory services and no fault was found with her performance. She therefore claims that looking to the nature of the services rendered by her, they were of permanant nature and hence the action of the Municipal council in terminating her services is malafide and un-just. The staff of Party II is governed by Minimum Wages Act, 1948 and hence the wages payable to the

employees should have been in accordance with the rates of wages declared by the State Government from time to time. The workman claims that the rates of wages payable to LDC comes to Rs. 50.32 per day w.e.f. 16-8-88 and Rs. 52.50 from 1-1-1989 and Rs. 54.30 from 1-7-1989 whereas she was paid for less than the rates prescribed by the Government. Hence, it has been alleged that a penal action should have been taken against Party-II as contemplated u/s 22 of Minimum Wages Act. Hence, it is prayed that this Tribunal should direct party II to pay the difference of wages on the basis of the above referred rates. Although the workman was employed intermittently, still she served for 248 days in a calendar year and as such the provisions contained in Sec. 25-F of the Industrial Disputes Act ought to have been followed by Party II. Hence, on this ground also, the order of termination is bad in law. After the termination of services of the workman, she was informed that some posts of Peons, LDCs and Supervisors were to be filled in for which the candidates would be interviewed by the Departmental Selection Committee scheduled on 11-9-90. The workman appeared for the interview but unfortunately she was not selected, although she claims that she had the requisite qualification and experience. Instead, the Committee selected 5 female clerks whose names are given on page 5 of the claim statement. Thus, the workman's right was ignored and there was a breach of S. 25-H of the I. D. Act. Hence, the appointments of five clerks are in contravention to the provisions contained in S. 25-F and S. 25-H of the Industrial Disputes Act. Hence, the workman submits that the above referred appointment orders should be set aside by giving preference to the workman. Hence, the workman claims that: (1) She should be paid the difference of wages: (2) The orders appointing five persons mentioned on page 5 of Exb. 1 should be set side and the present workman should be appointed in one of the vacancies after holding that the workman's retrenchment is void and invalid.

4. Party II- M/s Margao Municipal Council by its written statement at Exb. 3 resisted the workman's claim contending interalia as follows:

The present reference is not maintainable in as much as the Government did not seem to have applied its mind to the facts of this case. Infact, Party II did not terminate the services of the workman but they automatically stood terminated by virtue of the last order of appointment dated 1-11-1989. The workman had accepted the terms and conditions of the contract of service and hence she is now estopped from contending that she should have deemed as permanent servant in the Council and that her termination is illegal and void. In view of the provisions contained in S. (oo) (bb) of the Industrial Disputes Act, the workman is not entitled to demand reinstatement. Without prejudice to the aforesaid contentions, it has been admitted that the workman was first appointed from 29-9-86 to 20-12-86 on purely temporary basis on daily wages of Rs. 25/-. It was the practice of the Municipal Council to appoint such daily rated persons who are dependents of the retiring employees as and when Council require temporary staff for running its administration. Whenever such appointments were made specific orders were issued informing the candidate that the appointment was for a specific period. Such orders are issued to the persons who are appointed on purely temporary basis. Hence, the last working day for the present workman was 30-11-1989. Thus, the contract of service came to an end by efflux of time and hence the termination is covered by the exception of S. 2(oo)(bb) of the I. D. Act. Hence the present reference is not maintainable. It has been contended that the Council appointed the workman who was a daughter of a retired employee out of humanitarian attitude but the appointment was of a temporary nature. Thereafter, she was called for an interview but she did not pass in the interview test and the five workmen named by her in Exb. 1 were appointed purely on the basis of merit. Since she was not selected by the Departmental Selection Committee, she could not be appointed and hence there was no question of confirming her on permanent basis. on the basis of these contentions, it has been prayed that the present reference does not survive for consideration and even if it survives, still the workman is not entitled to any relief whatsoever.

5. Thereafter the workman filed a rejoinder (Exb. 4) wherein she controverted all the material contentions taken up by the Municipal Council and reiterated her claim.

6. On these pleadings, I framed the following issues at Exb. 5.

1. Does Party No. I prove that her services were illegally terminated by Party No. II with effect from 30-11-1989 ?

2. Does she prove that she was entitled to be made permanent in service?

3. Does Party No. II prove that the service of Party No. I were on contract basis which came to an end on 30-11-1989 and as such she is not entitled to any relief ?

4. Whether Party No. I is entitled to any relief ?

5. What award or order ?

7. My findings on the above issues are as follows for the reasons stated below:

1. In the negative.

2. In the negative.

3. In the affirmative.

5. As per final order below.

REASONS

8. The rival contentions of the parties of this dispute have been stated in the opening paragraphs of this judgment, which need no further repetition. Now, the entire burden of proving the first two issues was obviously upon Party I- Workman. However, she has not led any oral evidence in support of her allegations. On her behalf Shri Gaitonde submitted an application on 21-1-92 wherein it has been stated that the workman does not wish to examine or to rely on any documents except those which are cited in the statement of claim and rejoinder. It has been also stated that she does not want to examine any witness in support of her case. Over and above, it has been further submitted in this application, "In view of the stand, there is no question of reinstatement and therefore the Union submits that the action of the employer is fair and justified is left for the decision of the Court. Union does not press for reinstatement and she should be given monetary benefits." In para. 4 of the Rejoinder at Exb. 4 filed by Shri Gaitonde, it has been further stated thus:

> "In view of Sub-Clause (bb) of clause (oo) of Sec. 2 issue does not survive and the petitioner claims that her services are terminated wrongfully violating the principles of natural justice and fair play and demands the relief as decided by the Industrial Tribunal having regards to the facts and circumstances of the case."

In view of this state of affairs it has been rightly contended by Shri M. S. Bandodkar that workman Miss Rebello has given up the point in the Rejoinder to her challenge that her case does not fall under retrenchment. Hence, according to him the only ground on which the workman's termination is challenged is that, it amounted to victimisation, malafide and against the principles of natural justice. Now, this being the allegation made by the workman, it was

obvious that the entire burden of proving her allegation was obviously upon her. However, as I have stated earlier the workman herself did not venture to step into the witness box nor did she examine any other witness on her behalf in support of her allegations. No burden was cast upon the employer and hence no evidence has been led on behalf of the employer.

9. Now, although it has been alleged that the workman's termination amounts to victimisation and was against the principles of natural justice still the said allegation has not been proved by any cogent evidence by the workman. No oral evidence was led and even the documents produced by her do not support her allegations. Hence, it has been rightly urged by Shri Bandodkar that the said allegations cannot be said to have been duly proved. To support his argument in this behalf, he has placed reliance on a ruling of the Supreme Court in the case of Bharat Iron Works v/s Patel 1976 II LLG wherein it has been clearly stated that the victimisation is a serious charge by an employee against the employer and the said charge must be proved by the employee by leading cogent evidence otherwise the said charge would fail. Thus, relying on these observations, it will have to be concluded that in the absence of any oral or documentary evidence led on behalf of the workman her allegation that the order of termination amounts to victimisation or against the principles of natural justice cannot be accepted.

10. It is the Employer's contention that the services of the workman were on contract basis which came to an end on 30-11-89 and as admitted by Shri Gaitonde the order of termination in this case does not amount to retrenchment. The termination also did not amount to victimisation or was malafide against the principles of natural justice and hence it follows that the workman is not entitled to the relief of reinstatement. Besides, as stated earlier the relief of reinstatement has also been given up by Shri Gaitonde in his application dated 21-1-92.

11. However, Shri Gaitonde has claimed that the workman should be given the monetary benefits which were accrued to her but which were not paid to her. It is his case that the workman was paid less than the minimum wages and hence the difference should be paid to her. However, it has been rightly pointed out by Shri M. S. Bandodkar for the Municipal Council that the scope of this reference is limited for considering whether the action of the Municipal Council is legal and justified and whether the workman was entitled to be declared as permanent. In view of the matter an incidental relief of monetary benefits calculated on the basis of difference of wages cannot be granted in this reference. Over and above, it has been brought to my notice by Shri Bandodkar that the present workman has filed LCC/2/92 for claiming the difference of wages which is still pending in the Labour Court. In view of the matter, it follows that no relief can be granted to the present workman in this reference and hence I answer the issues accordingly and pass the following order.

ORDER

It is hereby declared that the action of the Margao Municipal in termination the services of Kum. Adelina Soares Rebello, Lower Division Clerk, w.e.f., 30th November 1989 is perfectly legal and justified and hence she is not entitled to any relief whatsoever.

No order as to costs. Government be informed.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/33/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 31st May, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/53/92.

Miss Jacinta Lobo ... Workman/Party I.

V/s

M/s Sai Services Station Ltd ... Employer/Party II.

Workman represented by Adv. P. J. Kamat.

Employer represented by Adv. A. M. Karnik.

Panaji, Dated.: 30-4-93.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 the Govt. of Goa by its order No. 28/33/92-LAB dated 24-8-1992 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Sai Services Station Ltd., Panaji, in terminating the services of Miss Jacinta Lobo, Counter Sales Officer, with effect from 11-10-90 is legal and justified?"

If not, to what relief the workman is entitled?

2. On receipt of this reference, a case at No. IT/53/92 was registered and notices were served upon both the parties in response to which they appeared and submitted their pleadings which can be found at Exb. 5, 6 and 7. On going through the pleadings, I framed the necessary issues at Exb. 8 and thereafter the matter was posted for hearing. However, Shri P. J. Kamat representing party I - Workman and Shri A. M. Karnik representing Party II - Employer submitted before the Tribunal that there was every possibility of settling the claim out side the Court and accordingly they did settle the dispute and submitted a settlement on this day the 30th April, 1993.

3. It was the grievance of Party I-Workman that her services were illegally terminated by Party II-Management of M/s Sai Service Station Ltd., Panaji. On the other hand, it was the contention of Party

II-Employer that Miss Jacinta Lobo had tendered her resignation w.e.f. 11-10-90 and hence she was relieved of her job. However, a dispute was raised by the workman before the Labour Commissioner which ended in failure and hence the Government was pleased to refer this dispute to this Tribunal for adjudicating as to whether the order of termination of the workman is legal and justified.

4. However, as stated earlier, before the evidence in this case was recorded, it was submitted that there was possibility of settling the dispute and accordingly the settlement has been arrived at, which has been duly verified and recorded at Exb. 10. The learned Advocates for both the sides have submitted that in view of the settlement, a consent award be passed. I have gone through the terms of the settlement and I have found that they are certainly in the interest of the workman and hence I accede to the submission made by the learned Advocates for both the sides and pass the following consent award.

ORDER

In view of the settlement at Exb. 10, the following consent award is hereby passed.

1. It is agreed by and between the parties that the Management of M/s Sai Service Station Ltd., will pay a sum of Rs. 20,000/- (Rupees Twenty thousand only) to Miss Jacinta Lobo-Workman-Party I. in full and final settlement of all her dues including earned wages, gratuity, ex-gratia etc.

2. In view of the payment mentioned in clause no.1, hereinabove Party I/Workman withdraws her dispute listed at IT/53/92 treating the same as amicably settled and closed.

3. It is also agreed by and between the parties that Party I/ Workman shall not raise any claim/grievance in respect of employment including reinstatement with full back wages and continuity in service and/or any monetary compensation in view of the settlement reached between the parties.

4. Party I/Workman further agrees that she has no right of employment with the Employer/Party II on payment of the amount in clause no. 1 above.

5. Employer/Party II will make the payment as mentioned in clause 1 hereinabove to the workman/party I on or before 29-4-93 (The cheque for the aforesaid amount has been tendered and accepted by Party I-workman on 30-4-1993).

6. No order as to costs. Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal.

Order

No. 28/39/90-LAB

The following Award given by the Industrial Tribunal, Goa Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 31st May, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/37/90

Shri Vijay Kanolkar ... Workman/Party I

V/s

M/s Hotel Mandovi ... Employer/Party II

Workman represented by Shri Raju Mangueshkar.

Employer represented by Adv. A. M.Karnik.

Panaji. Dated.: 30-4-93.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 the Government of Goa by its order No. 28/39/90-LAB dated 20th August, 1990 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Hotel Mandovi, Panaji-Goa, in terminating the services of Shri Vijay Kanolkar, Assistant Maintenance Mechanic/Serviceman, with effect from 13-2-1989, is legal and justified?"

If not, to what relief the workman is entitled?"

2. On receipt of this reference a case at No. IT/37/90 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings, which can be found at Exb. 2, 3 and 4. On going through the pleadings, I framed the necessary issues at Exb. 5 and thereafter the matter was posted for hearing.

3. On behalf of Party I, the statement of workman was recorded at Exb. 8 and he also produced several documents which are at Exb. 2, 9, to Exb. 15. Adv. A. M. Karnik who is representing the Employer submitted that he did not want to examine the Inquiry Officer as the enquiry proceedings are already on record and hence the case was fixed for arguments. However, thereafter it was submitted that there was severy possibility of settling the dispute out of Court and eventually on 22-4-93 the learned Advocates for both the sides submitted that the dispute between the parties has been settled and hence it has been prayed that a conseat award be passed in terms of the settlement at Exb. 20. I have gone through the terms of settlement and have found that the same are in the interest of the workman and hence I accede to the request made by the learned Advocates for both the sides and pass the following consent award.

ORDER

In view of the settlement at Exb. 20 the following consent award is hereby passed.

1. The workman agrees to withdraw his case listed at IT/37/90, treating that the same matter is amicably settled to his satisfaction.

2. In view of clause no. 1 above, the employer agrees to pay to the workman by way of ex-gratia, a sum of Rs. 15,000/- (Rupees fifteen thousand only) in addition

to his dues amounting to Rs. 3077/- (Rupees three thousand seventy seven only) inclusive of unclaimed bonus for the year 1988-89, which the workman had not collected. Annexed herewith are the particulars of payment of Rs. 3077/- and marked as Annexure 'A'.

3. The payment mentioned in clause No. 2 above, is in full and final settlement of his claim for reinstatement with full back wages and continuity of service. The workman shall not raise any dispute whatsoever in the said matter or in any other matter. He also agrees that he has no right of employment with the employer/Party II.

4. Employer/Party II will make the payment on 22-4-1993 and issue the Service Certificate as if the workman has resigned from the services on his own.

5. No order as to costs. Government be informed.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal.

Order

No. 28/60/88-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 14th June, 1993.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/8/89

Shri Amancio Peter Cortez .. Workman/Party I

V/s

M/s Fomento Corp. .. Employer/Party. II

Workman represented by Adv. A. Nigalye.

Employer represented by Adv. B. G. Kamat.

Panaji, dated, 6.5. 1993

AWARD

In excercise of the powers conferred by clause (d) of sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947 the Government of Goa, by its order No. 28/60/88-ILD dated 11th January, 1989 has referred the following issue for adjudication by this Tribunal.

"whether the action of the management of M/s Fomento Corp., Margao, Goa, in terminating the services of Shri Amancio Peter Cortez, Garage Incharge, with effect from 1-2-1988 is legal and justified?

If not, what relief the workman is entitled to?

2. On receipt of this reference, a case at No. IT/8/89 was registered and notices were served upon both the parties in response to which they appeared and submitted their pleadings.

Party 1-Shri Amancio Peter Cortez (hereinafter called as the 'workman')has filed a statement of claim (Exb. 2) wherein he has everred as follows:

The workman was serving with Party II-Shri Madhu Timblo, proprietor of M/s Fomento Corp., Margao, Goa, (hereinafter called as the 'Employer') since 23-3-87 as a Garage Incharge in the Employer's branch at Mapusa-Goa. The last Salary drawn by the workman was Rs. 700/- p. m. and he worked till 5th Feb. 1989. On 1st Feb., 1989 the employer terminated the workman's services with immediate effect without notice, by his letter dated 25-1-88. It is the grievance of the workman that the order of termination of his services is illegal, arbitary and unjustified, on the date of the termination, the workman was holding a parmanent post of Garage Incharge and was continuously serving on that post, before termination no statutory notice was given to the workman and he was also not paid his legal dues. Besides, the workman alleges that the termination of his services was without any just cause or reason. Hence, the workman raised a dispute before the Labour Commissioner, but the employer did not remain present with the results that the conciliation ended in failure and a report to that effect was submitted to the Government, in respence to which, the Government was pleased to refer this dispute to this Tribunal for adjudication. The workman therefore prays that the order of termination be struck down and he should be reinstated in service with other incidental reliefs.

3. Party II-Employer by his written statement at Exb. 3 resisted the workman's claim contended interalia as follows:

It is true the workman was employed as a Garage Incharge at Mapusa, Goa and the said employment was mostly in managerial or administative capacity and as such it has been contended that he is not a workman as laid down in the I. D. Act. Besides, the workman was appointed on probation on 23rd March, 1987 to test his suitability for the said post. The post on which the workman was serving was of a permanent nature and on account of the nature of this post, the workman was appointed on probation to test his suitability for the said post. Hence, it is denied that the workman was appointed on the permanent post straight way from the date of his joining. Under the circumstances, it was not necessary for the employer to give any notice before terminating the services of the workman. At the time of termination of his services, all his legal dues were tendered to him and was asked to collect the same. Thus, this is a case of termination simplicitor and all the legal formalities were observed by the employer. It is denied that the termination was without any cause or reason. On the other hand, during the period of probation his performance was not at all satisfactory and the employer found that he was not a suitable candidate for being confirmed in the permanent post of Garage Incharge, and hence the employer had to terminate the services of the workman for his inefficiency. Hence, it has been contended that the order of termination is well justified and calls for no interference by this Tribunal.

4. Thereafter, the workman filed a rejoinder (Exb.4) wherein he contraverted the employer's contentions and reiterated his claim made in the statement of claim.

5. On these pleadings, my learned Predecessor Shri S. V. Nevagi, framed the following issues at Exb. 5.

1. Whether Party I/Workman was employed in managerial or administrative capacity on probation from 23rd March, 1987 as claimed in para. 1 of the Written Statement?

2. If so, whether the management of Party II found the workman/ Party I as neither fit nor suitable for confirmation in the post and as such his services were terminated by way of simple termination as stated in para. 6 of the written statement?

3. Whether the action of the management of M/s Fomento Corp., Margao, Goa in terminating the services of Shri Cortez, Garage Incharge, w.e.f. 1.2.1988 is just and legal in the circumstances of the case?

4. What reliefs, if any, is the workman entitled to in this case?

6. My findings on the above issues are as follows for the reasons stated below:

1. Party I-Workman was employed on probation.
2. Yes
3. Yes
4. The workman is not entitled to any relief.

REASONS

7. The rival contentions of the parties to this dispute have been stated in the opening paragraphs of this judgment which need no further repetition. Now, inorder to substantiate his claim, the workman has examined himself at Exb. 6 while on behalf of Party II-Employer two witnesses namely Ravindra S. Kamat and Hugu Gonsalves have been examined at Exb. 8 and 11. Both the parties have also produced relevant documents and on considering the oral and documentary evidence I now proceed to consider the issues framed in this case.

Now, the evidence on record discloses that the post of Garage Incharge was a permanent post in the employer's establishment. However, the main question that arises for determination is whether the present workman was appointed in this permanent post right from the beginning, i.e. since he joined the services on 23rd March, 1987. Now according to the employer the post of the Garage Incharge is certainly a responsible post for which an experienced candidate was required. However, the evidence of the workman discloses that he has studied only upto S. S. C. and he has no Diploma in technical sciences or mechanics. Before joining the Employer's establishment, this workman was serving on one Petrol Pumb. Thus, considering his qualifications it does not stand to reason that he could have been straight away posted on a permanent post of Garage Incharge. Now, it is a common ground that the order of appointment is not available in as much as it was not issued to the workman. However, this is also a circumstance to dislodge the workman's claim. Had he been appointed in the permanent post then I think the employer would not have failed to issue an appointment order stating therein the terms and conditions of service and the emoluments to which the workman would have been entitled. Thus, the very fact that there is no order of appointment further supports the employer's contention that since the workman was on trial basis or so to say on probation he was not given any order of appointment. I, therefore hold that the workman was on probation for 6 months. However, the probation period was extended but before the expiry of the extended period the employer found that his performance was not satisfactory and hence the workman's services were terminated. Now, although I have held that the workman was appointed on probation, still it is to much to think that the post held by him was of managerial or administrative nature as contended by the employer. I, therefore, reject the employer's contention in this behalf and hold that Shri Cardoz was a workman but he was appointed on probation and answer issue no. 1 accordingly. That takes me to consider whether the action of the management amounts to simple termination or retrenchment. Now, since the workman was on probation, he had no vested right in the sense that he was not holding a permanent post. He was discharged even during the period of probation and on this established state of affairs, it will have to be concluded that the action of the management was termination simplicitor and not retrenchment. The law on this point is now well settled by the decisions of the Supreme Court and also of several other High Courts. However, Shri B. G. Kamat has invited my attention to one ruling reported in F.L.R. 309 (Anthony Olinto Silva v. S. V. Nevagi & Others) It is a judgment of Division Bench of Our High Court at Panaji Bench wherein Their Lordships considered the position of a Trainee who was appointed for a period of 6 months. His training period was extended but on account of his unsatisfactory performance his services were terminated before the completion of one year. On the basis of these facts Their Lordships ultimately found that this termination of the trainee did not amount to retrenchment. Now, the facts in the instant are quite similar to the facts in the reported case and hence respectfully following the ratio in the above referred ruling, I hold that the action of the management in this case was a simple termination as contended by the employer in para. 6 of his written statement. I, therefore, answer issue no.2 in the affirmative.

9. The last question that remains to be considered is whether the order of termination is just and legal. Now, the order of termination can be found at Exb. 7. It reads thus:

January 25th, 1988.

To,
Mr. Amancio Cordez.
Mapusa Goa.

Please be informed that with effect from February 1st... 1988 you services are terminated.

Kindly collect your dues from the above office.

Yours faithfully,

For: FOMENTOCORP:

Sd/-
Julio Cruz

Received on 1st Feb., 1988.

10. Thus, the order of termination was duly received by the workman and he was also offered his legal dues and was directed to collect the same from the Company's office. However, the evidence shows that the workman did not collect the same and hence no fault can be found in the order of termination. Thus, in my view, the order of termination is perfectly legal and proper and hence I answer issue no. 3 accordingly.

11. Now, apart from the merits of this case, Shri B. G. Kamat has also urged that the present reference is not maintainable because there is no industrial dispute as such which could have been initiated before the employer in the beginning. Secondly, he has urged that the conciliation proceedings were initiated on the complaint made by the workman in which he did not claim reinstatement, but he requested the Conciliation Officer to pay his legal dues. This can be found from the workman's letter dated 25.3.1988 addressed to the Labour

Commissioner. In the last but one paragraph, of this letter, the workman has stated thus:

"Now, I have no other alternative but to give my case in your hands which I am confident you will take action in the matter and thus I may *get all dues which I have to receive*." (Underlining is mine for emphasise)

12. Thus, relying on this letter, it has been rightly urged by Shri Kamat that the workman raised a dispute only for obtaining his legal dues but there is absolutely no reference in this letter that he wanted reinstatement. Secondly, the evidence on record does not disclose that before approaching the Conciliation Officer, the workman had raised any dispute before the employer and hence relying on this state of affairs it has been urged by Shri Kamat that the present reference is not maintainable. To support his submission in this behalf, he has placed reliance on a ruling reported in AIR 1970 Delhi, 60 (Fedders Lloyod Corporation Pvt. Ltd. v/s Lt. Governor, Delhi & Others) and 1976 LAB IC 285 (Orissa Industries (P) Ltd. and Presiding Officer, Industrial Tribunal). In the First ruling of Delhi High Court, it has been observed thus:

"Demand by workmen must be raised first on Management and rejected by them before an industrial dispute can be said to arise and exist-Making of such demand to Conciliation Officer and its communication by him to Management who rejects the same is not sufficient to constitute industrial dispute. "AIR 1968 SC 529. Foll.

13. Thus, the above referred observations substantially support the submissions made by Shri B. G. Kamat for holding that the present reference itself is not maintainable. However, I have already found on merits that the workman has absolutely no case and hence I hold that the order of termination is perfectly legal and valid and hence he is not entitled to any relief whatsoever. I, therefore, pass the following order:

ORDER

It is hereby declared that the action of the Management of M/s Fomento Corp., Margao, Goa, in terminating the services of Shri Amancio Peter Cortez, Garage incharge, w.e.f., 1.2.1988 is perfectly legal and justified and hence the workman is not entitled to any relief whatsoever.

No order as to costs.

Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal.

ORDER

No. 28/7/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman, and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 23rd June, 1993.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/28/92.

Shri Hemant H. Naik ... Workman/Party I

V/s

M/s Chowgule Industries Ltd. .. Employer/party II

Workman represented by Adv. S. B. Kantak.

Employer represented by Adv. M. S. Bandodkar.

Panaji, Dated.: 29-4-1993.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order no. 28/7/92-LAB dated 6th April, 1992 has referred the following issue for adjudication by this Tribunal.

(1) Whether Shri Hemant H. Naik, Sales Representative of M/s Chowgule Industries Ltd., Mormugao Harbour is a work man under section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?.

(2) If so, whether the action of the management of M/s Chowgule Industries Ltd., Mormugao Harbour, in terminating the services of Shri Hemant H. Naik, Sales Representative, with effect from 20-9-91 is legal and justified.

(3) If the answer to (2) above is negative, to what relief the workman is entitled?

2. On receipt of this reference a case at No. 28/7/92-LAB dated 6-4-1992 was registered and notices were sereved upon both the parties in response to which they appeared and submitted their pleadings. Party I-Shri Hemant Naik (hereinafter called as the 'Workman") has filed the statement of claim Exb. 3 wherein he has averred as follows:

The workman was employed as a Sales Representative from 10th May, 1983 in the Marketing Division of Party II-M/s Chowgule Industries ltd., (hereinafter called as the 'Employer-Company'). However, his services were terminated under a letter dated 20th September,1991 which was sent by Registered post. Along with the said letter, he was offered a cheque for Rs. 11,197-50 as representing the retrenchment compensation and salary in lieu of one month's notice. This order of retrenchment has been challenged by the workman on the ground that no domestic enquiry was held and thereby the principles of natural justice were violated. The workman was not the juniormost in the cadre and no reason was assigned for his retrenchment. In the letter of termination a reference was made to two more letters dated 5th and 12th of September, 1991. He was directed to show cause. However, no enquiry was held and no opportunity was afforded to the workman to defend himself and hence the workman alleges that the order of termination is bad and inoperative and hence the same should be set aside and he should be reinstated with other incidental reliefs.

3. The workman's claim has been seriously contested by the Employer by his written statement at Exb. 5. The main contention taken up by the Employer is in substance to the effect that Party I-Shri Naik was serving as a Sales Representative and as such he was doing the work of promoting the sales of the company and at the time of his termination, his salary was Rs. 2239.50 p.m. In view of the matter, it has been contended that he is not a workman as defined in sec. 2(s) of the Industrial Disputes Act. On this basis it has been contended that this Tribunal has no jurisdiction to entertain and decide this dispute. The Employer has also taken up more contentions on the merits of this case and has tried to justify his order of termination passed against the workman.

4. Thereafter, the workman filed a rejoinder at exb. 6 wherein he controverted the employer's contention and reiterated his claim.

5. On these pleadings, I framed the following preliminary issues at Exb. 7.

1. Does Party I prove that he is a workman as defined in Section 2(s) of the Industrial Dispute Act?

2. If not, whether this Tribunal has jurisdiction to decide this reference?

6. My findings on the above issues are as follows for the reasons stated below:-

1. In the negative.

2. No

REASONS

7. As stated earlier, on the Employer's contention that Shri Naik is not a workman, a preliminary issue has been framed which is issue no. I referred to above. Now, it has been rightly contended by Shri Bandodkar for the Employer that while making a reference the Government was also not sure or was in doubt about the status of Shri Naik in the Concern of M/s Chowgule Industries Ltd., and hence issue no. 1 was framed by casting burden upon Party I, to prove his status. Now, before proceeding to consider the legal aspect of this case, I think it necessary to refer to Shri Naik's evidence which is the only oral evidence in this case. The Employer did not lead any oral evidence.

8. Shri Naik in his evidence at Exb. 8 as stated thus, which requires reproduction ad-verbitum:-

"I was serving with Party II since 10-5-83 as a Sales Representative ... My main duty was to promote the sales of the Company. I used to attend the dealers of the Company in South Goa and to collect orders for the products of the Company. I used to collect money as the price of the Commodities. I was reporting to the Marketing Manager. ... I used to go out to the dealers in the morning. On my return from tour I used to submit my report of the orders and the collection of money ... Nobody was engaged under me. I was the only Sales Representative in South Goa."

9. In his cross examination, he has further stated thus:

"My last drawn salary was Rs. 2,300/- p.m. I used to canvasse for sale and thereby used to increase the business of the Company ...I was doing the same job of canvassing and promoting of sales till I was discharged. Shri Chavan was the Marketing manager. I used to have discussions about canvassing with the Marketing Manager and there were sales meeting, for the promotion of sales."

10. Now, reading the aforesaid evidence, there can be absolutely no doubt to conclude that Shri Naik was appointed as sales Representative and in that capacity his main job was to canvass and to promote the sales of the Company by conducting tours and contacting the retailers. He used to obtain orders and used to supply the products of the Company to the retailers in South Goa. He was working under the Marketing Manager with whom he used to have discussions mainly for promotion of sales. On this established state of affairs the only question that arises for determination is to find out whether Shri Naik was a workman as defined in Section 2(s) of the I. D. Act.

11. Now, it has been rightly urged by Shri Bandodkar that the Employer does not allege that Shri Naik was holding any supervisory post or administrative or managerial post. Instead, it is the firm stand of the Employer that Shri Naik was a Sales Representative whose main job was to canvass and to promote sales of his Employer. On this established state of affairs, Shri M. S. Bandodkar has rightly placed considerable reliance on a ruling of the Division Bench of Our High Court in the case of S. G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. v/s U.D. Pademwar and Others. In that case Their Lordships were considering as to whether a Medical Representative of a Pharmaceutical company is a workman u/s 2(s) of the I. D. Act. After considering the several rulings of the Supreme Court and of other High Courts, their Lordships ultimately concluded that a Medical representative is not a 'workman' u/s 2(s) of the Act. Now, Shri Kantak for the workman has invited my attention to the Supreme Court rulings reported in:-

(1) AIR 1971 SC 922 (Burmah Shell Oil Storage and Distributing Company of India Ltd. v. The Burmah Shell Management Staff Association).

(2) (1983) 4 Supreme Court Cases 214 (S. K. Verma v/s Mahesh Chandra and another)

(3) AIR 1985 Supreme Court 985 (Arkil Govind Raj Rao v. Ciba Geigy of India Ltd., Bombay)

12. Now, these Supreme Court rulings have been considered by Their Lordships of Our High Court in the case of S. G. Pharmaceuticals (Supra) and in view of the matter it is impossible to suscribe to the submission made by Shri Kantak that the rulings relied upon by him fully support his client's case although in the case of S. G. Pharmaceuticals (Supra) Their Lordships of Our High Court have held that the Medical Representative is not a 'workman' as defined in Sec. 2(s) of the I.D.Act. Thus, respectfully following the ratio of the observations in the case of S. G. Pharmaceuticals (Supra) as applicable to the facts of the instant case, I hold that Shri Naik who is a Sales Representative was not a workman as defined in Section 2(s) of the Industrial Disputes Act and hence this Tribunal has no jurisdiction to decide the dispute between the parties. I, therefore, answer the issues accordingly and pass the following order.

ORDER

It is hereby declared that Party I-Shri Hemant H. Naik is not a workman as defined in Section 2(s) of the Industrial Disputes Act and hence the present reference stands dismissed with no order as to costs.

Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal.

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